

COUNTY BUDGET ACT: County clerk may purchase office machines and other supplies not of an expendable nature provided costs were included in his budget and approved by county court. The purchase should be made out of the funds of class 6; funds can only be transferred from classes 1, 2, 3 and 4 to class 5 during the year. Any other transfer should be made at the close of the fiscal year.

August 26, 1940

Honorable George L. Robertson
Prosecuting Attorney
Chariton County
Keytesville, Missouri



Dear Mr. Robertson:

This department is in receipt of your letter of August 22nd. Your letter contains two questions, and for convenience we shall segregate and give you our conclusions on each separately. The first question is as follows:

"The budget that was made by the County Court of Chariton County, for the year 1940, provided and authorized the expenditure of \$1,450.00 for furniture and adding machines for the office of the County Clerk. Does the County Clerk have the right to purchase such furniture and machines as he deems suitable and best for his office, or does that power vest solely in the County Court?"

In an opinion rendered by this department on May 9, 1935, to Joseph B. Wilhite, Prosecuting Attorney, Grant City, Missouri, we discussed and cited decisions which reviewed the history of the financial structure of counties prior to the passage of the County Budget Act. This decision has no bearing on the first question which you present but can be considered in connection with your second question. It is enclosed for the purpose of giving you our views and interpretations on various sections which were repealed by the County Budget Act and the limitations which the Budget Act now places on

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counties and especially the officers which administer it. It is enclosed for the purpose of avoiding needless repetition in this opinion.

The authority of a county officer to purchase supplies necessary for the conduct of his office without authority from the county court has been recognized prior to the passage of the Budget Act in a number of decisions. Without quoting from the decisions, we mention the following merely to show that the county officer is still entitled to purchase the necessary supplies unless the financial condition of the county prevents the same. Gammon v. Lafayette County, 79 Mo. l.c. 220; Saylor v. Nodaway County, 159 Mo. l.c. 524, 525; Ewing v. Vernon County, 216 Mo. 681. The authority of the county clerk to purchase such supplies, having been established, we next determine whether he is prevented from purchasing the same by the terms of the County Budget Act.

The original Act was passed by the General Assembly in 1933, Laws of 1933, pages 340 to 351, inclusive. Section 1, page 340, Laws of 1933, was amended in 1939, page 657, the only change being to the effect that the clerk of the county court "of the several counties of this state shall be the budget officer of such county and as such shall prepare all data, etc."

The Laws of 1937, page 422, repealed and reenacted Sections 2 and 3 of the original Act. We find no material changes with respect to Classes 4 and 6 which are the only classes which are pertinent to your question. Class 4 is as follows:

"Class 4: The county court shall next set aside the amount required to pay the salaries of all county officers where the same is by law made payable out of the ordinary revenue of the county, together with the estimated amount necessary for the conduct of the offices of such officers, including stamps, stationery, blanks and other office supplies as are authorized by law. Only supplies for current office use and of an ex-

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pendable nature shall be included in this class. Furniture, office machines and equipment of whatever kind shall be listed under class six."

Under section 3, page 342, Laws of 1933, it is the duty of the various officers to furnish estimates of their needs. The first sentence of said section is as follows:

"It is hereby made the express duty of every officer claiming any payment for salary or supplies to furnish to the clerk of the county court, on or before the fifteenth day of January of each year an itemized statement of the estimated amount required for the payment of all salaries or any other expense for personal service of whatever kind during the current year and the section or sections of law under which he claims his office is entitled to the amount requested, also he shall submit an itemized statement of the supplies he will require for his office.
* * * * *

Referring again to Class 4, we assume that the county clerk, in making his estimate, included certain supplies for his office. " * * * Only supplies for current office use and of an expendible nature shall be included in this class. Furniture, office machines and equipment of whatever kind shall be listed under class six." Therefore, the furniture and adding machines which the county clerk budgeted and requested to the amount of One Thousand Four Hundred Fifty (\$1450.00) Dollars can be considered only with the terms of Class 6 in mind. Class 6 being as follows:

"After having provided for the five classes of expenses heretofore specified, the county court may expend any balance for any lawful purpose. Provided, however,

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that the county court shall not incur any expense under class six unless there is actually on hand in cash funds sufficient to pay all claims provided for in preceding classes together with any expense incurred under class six. Provided, that if there be outstanding warrants constituting legal obligations such warrants shall first be paid before any expenditure is authorized under class 6."

Many of the counties seldom, if ever, have any revenue in Class 6. It may be possible that your county is more fortunate and that there is a cash reserve in Class 6.

Therefore, we are of the opinion that the county clerk in your county can purchase the supplies which he originally budgeted and the same were approved by the county court.

II.

Your second question is as follows:

"Does the County Court have the power to transfer funds from one class to another class at any time it deems desirable? If not, when and under what conditions does the County Court have the power to make a transfer from one class to another class?"

The only provision in the Budget Act for transferring funds from one class to another is mentioned in Class 5, page 423, Laws of 1937 --

"The county court shall next set aside a fund for the contingent and emergency expense of the county, the county court

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may transfer any surplus funds from classes 1, 2, 3 and 4 to class 5 to be used as contingent and emergency expenses. From this class the county court may pay contingent and incidental expenses and expense of paupers not otherwise classified. No payment shall be allowed from the funds in this class for any personal service, (whether salary, fees, wages or any other emoluments of any kind whatever) estimated for in preceding classes."

It will be noted from the above that the county court may, at any time when a surplus is determined in classes 1, 2, 3 and 4, transfer any such surplus to class 5. This department has never advised the promiscuous transferring of funds from one class to another, the burden and responsibility for making such transfers being on the county court and "any other officer participating in the issuance of a warrant contrary to the Budget Act." However, we are enclosing an opinion written to Honorable L. A. Pickard, Presiding Judge of the County Court, Kennett, Missouri, which contains suggestions as to transferring funds among the classes. Also, an opinion to Miss Carrie Williams, Treasurer of Barry County, Cassville, Missouri, which makes further suggestions of transferring funds.

The financial condition of a county should be the prime element to bear in mind before any transfer is made. If the financial condition is such that priority of payments can be sacredly preserved and no officer will incur liability under Section 8, Laws of 1933, page 346, then it is possible that funds may be transferred in the manner as outlined in the enclosed opinions.

Respectfully submitted,

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APPROVED:

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