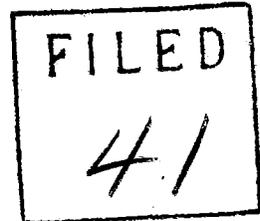


COUNTY BUDGET ACT: Warrants should not be issued in excess of the estimate of budget; warrants issued in excess of the anticipated revenue are illegal and void.

July 21, 1941

Hon. W. H. Holmes
Prosecuting Attorney
Vienna, Missouri



Dear Mr. Holmes:

This department is in receipt of your letter of July 12th, 1941, wherein you make the following request:

"Our County Treasurer wants an opinion from your office on the following situation: He has paid when he had the funds on hand, and protested warrants when he did not have funds available, on classes four and five for the year 1940, until the full amount of anticipated revenue has been taken up. Other parties now present warrants on these two classes and issued by the County Court for the year 1940 in excess of the budget estimate. The holders of the warrants insist on them being protested on the back thereof by the County Treasurer so that they would be interest bearing.

"Section 13801 R. S. 1939 covers the entering of warrants and 13833 the protest thereof, while Section 10917 places an apparent liability on County Officers issuing or paying warrants contrary to the provisions of the County budget law.

"Please favor me with an opinion in order that the County Treasurer may know what his duties and liabilities are in this connection, and oblige."

The question which you present involves the authority of the county court to issue warrants in excess of the anticipated revenue and of the budget estimate as approved by the county court, and the validity of the warrants now in the hands of the parties. In the first instance, Article X, Section 12 of the Constitution of Missouri is a direct prohibition against, in effect, spending more money than received by the county, or can be reasonably and honestly anticipated as revenue. The first sentence of said section being as follows:

"No county, city, town, township, school district or other political corporation or subdivision of the State shall be allowed to become indebted in any manner or for any purpose to an amount exceeding in any year the income and revenue provided for such year, without the consent of two-thirds of the voters thereof * * * * *"

The County budget act, passed by the Legislature in 1933, now Sections 10910 to 10935, R. S. Mo. 1939, inclusive, placed counties more or less on a cash basis in that the anticipated revenue for a current year must be classified in five main classes and based on a budget approved by the county court with a strict injunction to all parties participating in the paying out of funds to sacredly preserve priorities.

In Section 10917 R. S. Mo. 1939 the last paragraph is known as the penalty provision and subjects any official participating in the issuance or payment of a warrant contrary to the budget act to a suit on his official bond. It further contains the provision that any warrant issued contrary to the provisions of the act shall be void and of no binding force or effect. There is a further provision in the act to the effect that the amount budgeted shall not exceed ninety per cent of the anticipated revenue.

In view of the provisions of the statute it is our opinion that the action of the county court, or any other officer participating in the issuance of warrants in excess of the anticipated revenue for 1940 and of the budget estimate, is void and of no binding effect.

July 21, 1941

As to the holders of the warrants, we refer you to the decision of State ex rel. National Bank v. Johnson, 162 Mo. 621, l. c. 630, 631, as to the manner in which the warrants should be paid provided they were valid. In the decision of Book v. Earl, 87 Mo. 246, and referred to in the decision of Andrew County ex rel. v. Schell, 135 Mo. 31, l. c. 38, the holding is to the effect that warrants are valid when issued within the anticipated revenue but invalid when in excess of it.

We think it needless to cite further authorities in view of the plain provisions of Article X, Section 12 of the Constitution, which prohibits a county from exceeding its anticipated revenue.

We therefore hold that the warrants in question which were issued in excess of the anticipated revenue for the year 1940 are illegal and void.

Respectfully submitted,

OLLIVER W. NOLEN
Assistant Attorney-General

APPROVED:

VANE C. THURLO
(Acting) Attorney-General

OWN:CP