

COUNTIES: Deficit in road districts can not be paid out of the current revenue, but must be paid out of the delinquent taxes or surplus in subsequent years.

November 25, 1941

2/1/43  
Honorable R. P. C. Wilson III  
Prosecuting Attorney  
Platte County  
Platte City, Missouri



Dear Sir:

This Department is in receipt of your letter of sometime ago, wherein you made the following inquiry:

"I respectfully request the opinion of your department on the question presented in the facts following.

"The County Court that preceded the present Court in office exceeded the revenue in expenditures on some Road Districts in this county, and this fact is shown by the audit.

"The County Treasurer argues that the present court should stop spending money in these districts until the red balances are liquidated out.

"The present County Court takes the position that they are not responsible for the red balances left by the old court, and that they can expend the amount of money anticipated from current taxes derived from those districts in the districts, regardless of the red balances left by the old court."

You state in your letter that the previous county court exceeded the revenue in expenditures on some of the road districts. We can not determine whether the court exceeded the anticipated revenue, or the expenditures were within the anticipated revenue, but all the revenue was not derived from the collection of taxes. In addition, we can not determine whether the road districts mentioned in your letter are what is termed common road districts or special road districts. However, we assume that they are common road districts, as the special road districts have a system of taxation more or less independent of the county court.

If the revenue was exceeded, that is, over and above the anticipated revenue, it may be possible that the amount of the exceeded expenditures is now invalid, but if within the anticipated revenue, the deficit is valid. The question arises as to the current revenue being used to retire the deficit. The position of the county court appears to be, in effect, correct that they are not responsible for the deficit.

The decision of State ex rel. v. Johnson, 162 Mo. 621, seems to bear out the position of the court, l. c. 629:

"It was ruled in Book v. Earl, 87 Mo., 246, that 'the evident purpose of the framers of the Constitution and the people who adopted it was to abolish in the administration of county and municipal government, the credit system, and establish the cash system by limiting the amount of tax which might be imposed by a county for county purposes, and limiting the expenditures in any given year to the amount of revenue which such tax would bring into the treasury for that year.' But it was at the same time said: 'Under this section the county court might anticipate the revenue collected, and to be collected, for any given year, and contract debts for ordinary current expenses, which would be binding on the county to the extent of the revenue provided for that year, but not in excess of it.'

November 25, 1941

"It was then anticipated that, though the county court might not issue warrants in excess of the levy for a year's current expenses, and that a creditor might rely upon the fact that his contract was within the amount of revenue levied and provided, and trust to the power of the State to enforce its taxes, still it might happen from some unforeseen cause enough of the estimated amount of revenue might not be collected to pay all the warrants drawn against it in anticipation. Under such circumstances it has never been ruled that such a creditor's warrent was absolutely void and extinguished by the non-payment in the year in which it was drawn. On the contrary, this court has often said in no uncertain terms that it was valid and payable out of any surplus revenue in the hands of the county treasurer that might arise in subsequent years. (Randolph v. Knox County, 114 Mo. 142; Andrew County v. Schell, 135 Mo. loc. cit. 39; State ex rel. v. Payne, 151 Mo. loc. cit. 673; Railroad Co. v. Thornton, 152 Mo. 570; State ex rel. v. Allison, 155 Mo. loc. cit. 344; and on this point, Reynolds v. Norman, 114 Mo. 509.)"

The decision and cases mentioned therein have never been overruled by later decisions, and we are of the opinion that the Johnson Case is the controlling decision on the question.

We are therefore, of the opinion that the county court does not have to use the current revenue of the present year to pay prior indebtedness in the road districts. Such indebtedness may be paid from delinquent taxes or surplus of revenue which may arise in subsequent years.

APPROVED:

Respectfully submitted,

VANE C. THURLO  
(Acting) Attorney General

OLLIVER W. NOLLEN  
Assistant Attorney General

OWN/rv