

COUNTY BUDGET ACT : Cannot compile a second budget which  
COUNTY COURT : has been reported to State Auditor.

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March 4, 1942  
3-14

Hon. Robert W. Smart  
Prosecuting Attorney  
Mt. Vernon, Missouri



Dear Sir:

We are in receipt of your request for an opinion,  
which reads as follows:

"In keeping with provisions of Section 8660, Missouri Revised Statutes of 1939, the duly elected County Surveyor of Lawrence County is serving in the capacity of ex officio County Highway Engineer. Lawrence County being a county of not less than 20,000 inhabitants nor more than 50,000 inhabitants, the salary for the County Highway Engineer ranges from \$1200.00 to \$2,000.00, to be determined by the Court. Due to the fact that the Court was uncertain as to the amount of salary that should be paid to the Highway Engineer within the prescribed bracket, the salary was set at the minimum of \$1200.00 for the year 1941. When the budgets for 1942 were prepared by the County officers, the County Surveyor as ex officio County Highway Engineer prepared his salary budget on the basis of the order of the Court for 1941 at \$1200.00. This budget has already been approved by the office of the State Auditor. It now appears advisable to increase the salary of the County Highway Engineer however there is a question in my mind as to whether or not an order of

the Court increasing this salary, within the statutory limits, would be in violation of Article 14, Section 8 of the Constitution of Missouri. Assuming that to increase the salary would not be in violation of the Constitutional Prohibition, would the previous approval of the budget for this particular office for the year 1942 constitute a bar for such an increase for the current year or could it be accomplished by revision of the budget through the State Auditor's office."

Section 8660 R. S. Missouri, 1939, partially reads as follows:

"\* \* \* Provided further, after January 1, 1941, that in all counties in the state which contain, or which may hereafter contain not less than twenty thousand inhabitants or more than fifty thousand inhabitants the county surveyor shall be ex officio county highway engineer, and his salary as county highway engineer shall not be less than twelve hundred dollars per annum, nor more than two thousand dollars per annum as shall be determined by the County Court."

Under the above partial section the county court determines the salary of the ex officio highway engineer, which shall be not less than Twelve Hundred Dollars per annum, nor more than Two Thousand Dollars per annum.

Section 10910 R. S. Missouri, 1939, partially reads as follows:

" \* \* \* The county courts of the several counties of this state are hereby authorized, empowered and directed and it shall be their duty, at the regular February term of said court in every year, to prepare and enter of record and to file with the county treasurer and the state auditor a budget of estimated receipts and expenditures for the year beginning January 1, and ending December 31. \* \* \* "

Section 10917 R. S. Missouri, 1939, sets out the procedure of the revision of the estimates of county expenditures that are presented to the county court. It also provides for the revision of the individual estimates given by the individual officers of the county.

Under the two above partial sections there is no provision for a revision, or resubmission of the budget to the county treasurer and the state auditor. The two partial sections specifically point out the mode and manner of procedure of arriving at the proper estimates of the county budgets, so as to keep the county within the estimated revenues of that year. That the procedure must be followed was held in the case of Nodaway County v. Kidder, 129 S. W. (2d) 857, l. c. 860, where the court said:

"\* \* \* If the statute provides compensation in a particular mode or manner, then the officer is confined to that manner and is entitled to no other or further compensation or to any different mode of securing same.

Such statutes, too must be strictly construed as against the officer. State ex rel. Evans v. Gordon, 245 Mo. 12, 28, 149 S. W. 638; King v. Riverland Levee Dist., 218 Mo. App. 490, 493, 279 S. W. 195, 196; State ex rel. Wedeking v. McCracken, 60 Mo. App. 650, 656."

In the case of Gill v. Buchanan County, 142 S. W. (2d) 665, l. c. 668, the Supreme Court, in commenting upon the same proposition, said:

"\* \* This court has held that the purpose of the County Budget Law was 'to compel \* \* \* county courts to comply with the constitutional provision, section 12, art. 10' by providing 'ways and means for a county to record the obligations incurred and thereby enable it to keep the expenditures within the income.' Traub v. Buchanan County, 341 Mo. 727, 108 S. W. 2d 340, 342." (Under-scoring ours.)

When special powers are conferred, or special methods are prescribed, for the exercise of the power, the exercise of such power is within the maxim that the expression of one thing is the exclusion of another, and the doing of the thing specified, except in the particular way pointed out, is nugatory. (Kroger Grocery & Baking Company v. City of St. Louis, 106 S. W. (2d) 435).

Section 10915 R. S. Missouri, 1939, partially provides:

"\* \* \* The estimate of each such officer shall cover the entire year beginning January first and ending December thirty-first, both dates inclusive. \* \* \*"

The officers referred to above means every officer who expects to claim pay for services, or to receive supplies to be paid for from the county funds.

Article X, Section 12, of the Constitution of Missouri, provides that the county court cannot incur expenditures in any year beyond the revenues collected in that year.

Under Section 10914, Class 4, Laws of Missouri, 1941, Page 652, it is provided as follows:

"Pay or salaries of officers and office expense. List each office separately and the deputy hire separately.

"(County clerk shall prepare estimate for the county court but his failure does not excuse the court.)"

Section 10911, Class 5, Laws of Missouri, 1941, Page 650, provides as follows:

"The county court shall next set aside a fund for the contingent and emergency expense of the county, the court may transfer any surplus funds from classes 1,2,3,4 to class 5 to be used as contingent and emergency expense. 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."

This class is what is known as "the emergency class", and specifically provides that no salaries should be paid out of the emergency fund.

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There is no question but that it was the intention of the legislature that once the budget had been passed upon by the county court in the revision it was final for that year as to the amount of money set out as payable under the different classes.

CONCLUSION

In view of the above authorities, it is the opinion of this department that the county court of Lawrence County cannot re-budget, or cannot again revise the original budget for the year beginning January 1 and ending December 31, 1942.

Respectfully submitted

W. J. BURKE  
Assistant Attorney General

APPROVED:

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ROY McKITTRICK  
Attorney General of Missouri

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