

COUNTY OFFICERS: Entitled to collect full salary for each year although amount not fully included in budget.

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June 2, 1942

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Hon. Arthur Thomason  
Clerk of the County Court  
Liberty, Missouri

6-5  
FILE

Dear Sir:

This will acknowledge receipt of your letter of May 27, 1942, in which you request an opinion as follows:

"By instruction from the county court of Clay County, Missouri, I am writing to you for an opinion in the matter of a bill presented to the county court by Conn Withers, Prosecuting Attorney of Clay County, Missouri, for the year 1941.

"Mr. Withers made his budget for 1941 and was passed by the County Clerk and County Court for the sum of \$3125.00 and Mr. Withers made his monthly bills to the County Court which were paid.

"Now being as the year 1941 has passed and Mr. Withers has resigned in the month of April, 1942, he presents to the Court a bill in the amount of \$625.00. It seems by the last census the population of Clay County exceeded 30,000, therefore the salary of said Prosecutor was increased according to law.

"The Court desires to know if under the circumstances is it mandatory that they issue a warrant in the sum of \$625.00 for salary due according to the statutes.

"We further request that you give to us an opinion in the matter of salary of the Prosecuting Attorney after he entered the military service.

"It is understood that he entered such service on or about April 5th, 1942.

"He has presented to this court a bill for his services as Prosecuting Attorney for the month of April and 20 days for the month of May, 1942.

"If he is authorized to employ an assistant and draw his salary as such Prosecutor, we will be glad to pay same, but do not want to issue warrants that are contrary to law."

In this request you ask for opinions on two questions concerning the payment of salary to Conn Withers, former Prosecuting Attorney. Your first question, is it mandatory upon the County Court to issue to Mr. Withers at this time a warrant for a portion of the salary due him for the year 1941 which was unpaid at that time, will be answered by this communication. Your second question, relating to the payment of salary from the time Mr. Withers entered the Naval service in April until the 20th day of May, you had previously asked and a separate opinion is being prepared on that question.

In regard to the first question, the failure to include in the budget for 1941 the proper amount for the Prosecuting Attorney's salary does not preclude the Prosecuting Attorney from collecting the balance remaining. It is stated in *Gill v. Buchanan County*, 142 S. W. (2d) 665, l. c. 668:

"Defendant also contends that plaintiff is not entitled to recover because there was not a sufficient amount provided in the 1934 county budget for county court salaries to pay salaries of \$4,500 each. (Only \$840 more than the total of salaries figured at \$3,000 each was included in the salary fund for the county court.) However, as hereinabove noted, salaries of county judges are fixed by the Legislature and the Constitution prevents even the Legislature from changing them during the terms for which they were elected. Surely, the county court cannot change them, by either inadvertently or intentionally providing greater or less amounts in the salary fund in the budget. The

action of the Legislature in fixing salaries of county officers is in effect a direction to the county court to include the necessary amounts in the budget. Such statutes are not in conflict with the County Budget Law but must be read and considered with it in construing it. They amount to a mandate to the County Court to budget such amounts. Surely no mere failure to recognize in the budget this annual obligation of the county to pay such salaries could set aside this legislative mandate and prevent the creation of this obligation imposed by proper authority. Certainly such obligations imposed by the Legislature were intended to have priority over other items as to which the county court had discretion to determine whether or not obligations concerning them should be incurred. They must be considered to be in the budget every year because the Legislature has put them in and only the Legislature can take them out or take out any part of these amounts. 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.

"To properly accomplish that purpose, mandatory obligations imposed by the Legislature and other essential charges should be first budgeted, and then any balance may be appropriated for other purposes as to which there is discretionary power. Failure to budget funds for the full amount of salaries due officers of the county, under the applicable law,

which the county court must obey, cannot bar the right to be paid the balance. Instead, it must be the discretionary obligations incurred for other purposes which are invalid, rather than the mandatory obligation imposed by the same authority which imposed the budget requirements. We, therefore, hold that a county court's failure to budget the proper amounts necessary to pay in full all county officers' salaries fixed by the Legislature, does not affect the county's obligation to pay them."

(Underscoring ours.)

If the former Prosecuting Attorney has a valid claim, as he would have under the statement of facts contained in your letter, and the rule in the case of Buchanan County, supra, it remains to be determined whether or not there is a mandatory duty upon the County Court to issue to Mr. Withers a warrant for the unpaid balance at this time. This question cannot be definitely answered by this office for the reason that we have no information concerning the budget of Clay County for the year 1942, or the financial condition of the County. However, it is possible to make some suggestions from which you will be able to determine whether or not a warrant should be issued at this time for the unpaid balance of salary due in the year 1941.

The revenue anticipated for the year 1942, and upon which anticipated revenue the budget for 1942 is based, is first chargeable with obligations falling due in 1942. And no debts for prior years may be paid from the 1942 revenue unless there is a surplus remaining after paying the necessary charges for the year 1942. Absent a surplus which is free from charges for budgeted items, there would be no authority for issuing a warrant at this time.

#### CONCLUSION

It is the conclusion of the writer that under the statement of facts contained in your letter Mr. Withers has a valid and enforceable demand for an unpaid balance of salary. If

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there is a surplus in the anticipated revenue for the year 1942, over and above all necessary charges, a warrant for such unpaid salary balance for the year 1941 could be issued.

Respectfully submitted,

W. O. JACKSON  
Assistant Attorney-General

WOJ:CP

APPROVED:

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ROY McKITTRICK  
Attorney-General