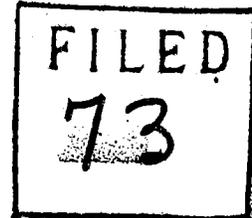


COUNTY BUDGETS: May be revised but no authority granted county court to donate county funds to city.

June 25, 1945

6/26



Honorable B. E. Ragland
Chief Clerk
Office of the State Auditor
Jefferson City, Missouri

Dear Mr. Ragland:

Under date of June 20, 1945, you wrote the Attorney General enclosing a letter from Honorable John A. Mooney, Clerk of the County Court of Phelps County, which letter is as follows:

"As you have probably been informed through the press and radio, the little city of Newburg in this County was almost wiped out of existence by a flood Friday, June 8. The houses in the flood area are filled with mud and washed from the foundations, the water works and sewage system disrupted and the streets torn up and filled with debris that is going to cause a health hazard unless more help is obtained to clear them.

"Now the County Court wants to revise the budget and donate \$2,000.00 to the city if it can be done legally. Will you please advise us in regard to the legality of such donation and as to whether or not the revised budget will meet with your approval?"

And you made the following request for an opinion concerning the letter:

"We are enclosing herewith a letter from John A. Mooney, county clerk Phelps County.

"We request an official opinion on the questions set out in Mr. Mooney's letter. We would appreciate an early reply to this request."

The letter of Mr. Mooney contains three questions. These questions are:

1. May the County Court at this time revise its budget for the year 1945 adopted at the February Term of Court?
2. May the County Court legally donate \$2000.00 to the City of Newburg?
3. If the County Court has authority to revise the budget and make this gift will the State Auditor approve such action?

The first two questions are of such a general nature that it is impossible to give a specific answer to them and there can only be a discussion of the County Court in regard to these matters. The third question is directed specifically to the State Auditor and involves the question of the authority of the State Auditor to act, and, if he has such authority, as to the exercise of his discretion in approving or rejecting such changes. Only the first portion of this question can be discussed, for, if the State Auditor has such authority, it would be highly presumptuous for this office to undertake to direct the State Auditor in the exercise of his discretion.

The County Budget Law is a law of comparatively recent origin, as it was first enacted in 1933, Laws of Missouri 1933, page 340 et seq. Slight amendments have been made to it since its enactment. The County Budget Law is now found in Article 2, Chapter 73, R. S. Mo. 1939, and the last amendment to the Act is shown at page 650, Laws 1941. This amendment is not involved in the discussion of the questions here under consideration and for that reason in citing and referring to the Law the citations will be to the 1939 Revision of the Statutes.

By the provisions of Section 10910, R. S. Mo. 1939, which was originally Section 1 of the County Budget Act, the first eight sections of the Act apply to counties having a population of fifty thousand inhabitants or less by the last decennial census. The population of Phelps County by the 1940 census was 17,437, and therefore only the first eight sections of the Act are the ones we must consider.

In addition to the provision of Section 10910 heretofore mentioned, this section also defines terms, and places the duty of preparing the budget on the county court. It further requires the court to place the budget of record, and file copies with the county treasurer and the state auditor, this to be done at the February Term. At this point it is considered advisable to call attention to the last sentence of this section, as follows:

"The county court shall classify proposed expenditures according to the classification herein provided and priority of payment shall be adequately provided according to the said classification and such priority shall be sacredly preserved."

Section 10911, R. S. Mo. 1939, requires the court to classify proposed expenditures into six classes, Briefly, these classes are; (1) support of insane pauper patients in state hospitals; (2) cost of holding circuit court and elections; (3) upkeep, repair and construction of roads and bridges; (4) salaries and office expense of county officers (not including furniture and office machines); (5) contingent and emergency expense; and (6) balance may be expended for any lawful purpose. By the terms of Class 5 the county court is specifically authorized to transfer any surplus from Classes 1, 2, 3 and 4 to Class 5.

Section 10912 places the duty on officers claiming salary or supplies to furnish an itemized estimate of the amount required before January 15th of each year, and Section 10913 places certain duties on the county clerk.

Section 10914 requires the county court to show the estimated expenditures for the year by classes, the classes being the same as those mentioned in Section 10911, and the same provision is found under Class 5 for transferring any surplus from Classes 1, 2, 3 and 4 to Class 5. From the language of Class 6 we quote the following:

"* * * Provided however, if necessary to pay claims arising in prior classes warrants may be drawn on anticipated funds in class six and such warrants to pay prior class claims shall be treated as part of

such prior funds. Nor may any warrant be drawn or any obligation be incurred in class six until all outstanding lawful warrants for prior years shall have been paid. The court shall show on the budget estimate the purpose for which any funds anticipated as available in this class shall be used."

Section 10915 further treats of the duties of the officers of the county in submitting their estimates, and Section 10916 prescribes forms to be used in making the submission of estimates.

Section 10917, the last section applicable to our questions, is as follows:

"It is hereby made the first duty of the county court at its regular February term to go over the estimates and revise and amend the same in such way as to promote efficiency and economy in county government. The court may alter or change any estimate as public interest may require and to balance the budget, first giving the person preparing supporting data an opportunity to be heard but the county court shall have no power to reduce the amounts required to be set aside for classes 1 and 3 below that provided for herein. After the county court shall have revised the estimate it shall be the duty of the clerk of said court forthwith to enter such revised estimate on the record of the said court and the court shall forthwith enter thereon its approval. The county clerk shall within five days after the date of approval of such budget estimate, file a certified copy thereof with the county treasurer, taking his receipt therefor, and he shall also forward a certified copy thereof to the state auditor by registered mail. The county treasurer shall not pay nor enter protest on any warrant for the current year until such budget estimate shall have been so filed. (This shall not

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apply to warrants lawfully issued for accounts due for prior year, lawfully payable out of funds for prior years on hand.) If any county treasurer shall pay or enter for protest any warrant before the budget estimate shall have been filed, as by this act provided, he shall be liable on his official bond for such act. Immediately upon receipt of the estimated budget the state auditor shall send to the county clerk his receipt therefor by registered mail.

"Any order of the county court of any county authorizing and/or directing the issuance of any warrant contrary to any provision of this law shall be void and of no binding force or effect; and any county clerk, county treasurer, or other officer, participating in the issuance or payment of any such warrant shall be liable therefor upon his official bond."

The County Budget Law has been several times before the Appellate Courts for interpretation and application, and the Supreme Court has declared the purpose of the Act. This declaration of purpose is found first in the case of Traub v. Buchanan County, 341 Mo. 727, 1. c. 731, and later in the case of Gill v. Buchanan County, 142 S. W. (2d) 665, 1. c. 668. From these two cases the following brief quotations are taken respectively:

"No power possessed by the county court was thereby curtailed. The budget officer simply determines whether sufficient money is provided with which to pay the obligation intended to be incurred by any contract or order presented to him for endorsement. This is a mere matter of bookkeeping. If the cash is on hand or has been provided for, it is the duty of the auditor or budget officer to make such endorsement. Prior to the enactment of the budget law a county court had no right to incur obligations in any one year in excess of the revenue provided for that year. By the enactment of the Budget law the Legislature has merely

provided ways and means for a county to record the obligations incurred and thereby enable it to keep the expenditures within the income. The power of the County Court not having been curtailed by the enactment of the budget law, the point made by respondent is without merit and is ruled against him."

"This Court has held that the purpose of the County Budget Law was 'to compel * * * county courts to comply with the Constitutional provisions of Section 12, art. 10' by providing 'ways and means for the county to record the obligations incurred and thereby enable it to keep the expenditures within the income.'" (Citing the Traub case.)

The county court has the duty of managing the financial affairs of the county. Section 7, Article VI of the Constitution of 1945. And under the Constitution of 1875, Section 36, Article VI. Also, Section 2480, R. S. Mo. 1939, which is here quoted as follows:

"The said court shall have control and management of the property, real and personal, belonging to the county, and shall have power and authority to purchase, lease or receive by donation any property, real or personal, for the use and benefit of the county; to sell and cause to be conveyed any real estate, goods or chattels belonging to the county, appropriating the proceeds of such sale to the use of the same, and to audit and settle all demands against the county."

And there are many other statutes not here set out.

In the management of the county business, the county court has such powers as are expressly conferred on it and such implied powers as are necessary to carry out the powers expressly granted. King v. Maries County, 297 Mo. 438.

Under the County Budget Law it is mandatory that sufficient funds be budgeted under the first four classes to meet the demands on these classes but if there should exist a surplus then this surplus can be transferred to Class 5. Here is authority for one revision of the county budget. Also warrants may be issued against Class 6 to pay claims against prior classes, which, in effect, is a revision of the budget authorized by statute.

These are the only two instances in the budget law where a revision is specifically authorized. However, the budget law does not curtail the powers of the county court and if the court in making its budget has not budgeted all of its anticipated revenue for expenditure and the county has funds unappropriated, then it is considered possible that it might be authorized to amend the budget for the purpose of expending a portion or all of this unappropriated balance.

This brings us to a discussion of the second question, "May the county court legally donate \$2000.00 to the City of Newburg?"

While the county court is the business agent of the county it can only disburse the funds of the county for public purposes. County Farm Bureau v. Jasper County, 315 Mo. 560; State ex rel. v. Chariton Drainage Dist., 252 Mo. 345. The revenue of the county is not to be regarded and treated in the same manner as the revenue of a private person or corporation. The county being a public corporation existing only for public purposes connected with the administration of state government, its revenue is subject to the control of the Legislature. C. J. S., Vol. 20, page 1106.

The Legislature of Missouri has authorized the expenditure of county funds for many purposes but a careful search of the statutes fails to reveal any authority granted to the county courts to appropriate funds of the counties to be used by cities in the manner indicated in the letter of Mr. Mooney.

As we find no authority for making any such grant of county funds to a city, no necessity exists for discussing the amount.

In regard to the third question, as no law is found authorizing such a grant it is not considered necessary to discuss the authority, if any, of the State Auditor to approve or disapprove any such action by the county court of Phelps County

as is indicated in the letter of Mr. Mooney.

Conclusion

Under some circumstances revisions may be made in county budgets. Further, no authority exists under which the county court may make a donation or grant for the purpose of repairing the waterworks or sewage system of a city when such waterworks or sewage system has been damaged by storm.

Respectfully submitted,

W. O. JACKSON
Assistant Attorney General

APPROVED:

HARRY H. KAY
(Acting) Attorney General

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