

TOWNSHIP ORGANIZATION:

Townships may not divide among special road districts a surplus of taxes remaining after township expenses have been paid; that such townships may legally issue warrants in any year against anticipated taxes for that year.

May 24, 1945



Honorable Theo. R. Schneider  
Prosecuting Attorney  
Bates County  
Butler, Missouri

Dear Mr. Schneider:

This will acknowledge your letter of May 11, 1945, requesting an opinion from this Department on two propositions incident to the administration of Chapter 101, R. S. Mo. 1939, which constitutes the township organization law of this State. Your letter states:

"Bates County is under township organization and one of the townships has three special road districts except for a small acreage. Assessments are made and taxes are collected by each of the road districts for the maintenance of the roads within the district. The township also levies and collects a township tax and each year has been accumulating a surplus of funds in this account.

"Section 14015, Revised Statutes of Missouri, 1939, provides that surplus funds of this nature shall be held by the township trustee until needed to pay township expenses. The question involved is whether or not after the township expenses have been entirely discharged the surplus remaining can be divided among the special road districts within the township.

"I would appreciate an opinion in the premises at your earliest convenience.

"I would also appreciate an opinion as to whether or not a township may legally issue warrants against anticipated taxes within a given year."

Your first question is whether or not after township expenses have been fully discharged, any surplus funds remaining may be divided among special road districts within such township.

Section 13933, Article 2 of said Chapter 101 defines the powers of townships under township organization, such powers to be administered by and through a board of directors for each township created under the provisions of Section 13976 of Article 9 of said Chapter 101.

The third and fourth subdivisions of said Section 13933 of Article 2 of said Chapter 101, are as follows:

"\* \* \* third, to make such contracts, purchase and hold personal property, and so much thereof as may be necessary to the exercise of its corporate or administrative powers; fourth, to make such orders for the disposition, regulation or use of its corporate property as may be conducive to the interest of the inhabitants thereof; \* \* \*"

Section 13934 of said Article 2 of said Chapter 101 is as follows:

"No township shall possess any corporate powers, except such as are enumerated or granted by this chapter, or shall be specially given by law, or shall be necessary to the exercise of the powers so enumerated or granted."

Section 26(a) of Article 6 of the New Constitution of Missouri, using almost the exact language of Section 12, Article 10 of the old Constitution of this State, provides:

"No county, city, incorporated town or village, school district or other political corporation or subdivision of the

state shall become indebted in an amount exceeding in any year the income and revenue provided for such year plus any unencumbered balances from previous years, except as otherwise provided in this Constitution."

Section 13985 of Article 9 of said Chapter 101, and also Sections 8821 and 8822, Article 17, Chapter 46, prescribe the method to be followed by the township board of directors in levying, collecting and preserving taxes to finance the township affairs. Said Section 13985 requires a different and special levy for road and bridge purposes and special bridge tax, aside from general township funds.

It appears that the whole plan for levying and collecting road and bridge taxes in such townships was separate from general taxes under the terms of the old Constitution and so remains under the new Constitution. Section 11 of Article 10 of the new Constitution sets forth the amount of levy for general purposes of counties and municipalities, according to assessed valuation of property in such counties.

Section 12 of Article 10 of the new Constitution reads as follows:

"In addition to the rates authorized in section 11 for county purposes, the county court in the several counties not under township organization, the township board of directors in the counties under township organization, and the proper administrative body in counties adopting an alternative form of government, may levy an additional tax, not exceeding thirty-five cents on each hundred dollars assessed valuation, all of such tax to be collected and turned in to the county treasury to be used for road and bridge purposes. In addition to the above levy for road and bridge purposes, it shall be the duty of the county court, when so authorized by a majority of the qualified electors of any road district, general or

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special, voting thereon at an election held for such purpose, to make an additional levy of not to exceed thirty-five cents on the hundred dollars assessed valuation on all taxable real and tangible personal property within such district, to be collected in the same manner as state and county taxes, and placed to the credit of the road district authorizing such levy, such election to be called and held in the manner provided by law.

"Nothing in this section shall prevent the refund of taxes collected hereunder to cities and towns for road and bridge purposes."

It appears from your letter where it states: "The township also levies and collects a township tax and each year has been accumulating a surplus of funds in this account," the surplus you mentioned as having been accumulated in the township funds is derived from such general township tax levied and collected for township expenses, and not from assessments made for road and bridge purposes for the three special road districts mentioned as existing in this township.

Section 14015, Article 12, Chapter 101, R. S. Mo. 1939, mentioned in your letter as the basis for your first inquiry, provides:

"Sec. 14015. Surplus tax money, how held.-- Whenever any greater amount of taxes shall be assessed in any township than the township charges thereof, and its proportion of tax and county charges, the surplus shall be paid by the collector to the trustee of the township, who shall hold the same until needed to pay township expenses."

The case of Jensen vs. Wilson TP Gentry County, 145 S. W. (2d) 372, was a case construing the township organization statutes. In that case the Court was particularly construing the effect and inviolability of Section 12301, R. S. Mo. 1929, which is our present Section 13978 of Article 9 of said Chapter 101, R. S. Mo. 1939. In holding that the terms of said Section 12301 were mandatory and that no claim could be allowed by the township directors unless it was verified

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by affidavit, and in holding that all of these township organization statutes were enacted to safeguard the public funds of the township, and that to permit the violation of any of them would be to open the door to fraud, our Supreme Court in its decision, l.c. 374, said of said Section 12301, now Section 13978:

"The terms of the statute are so forceful and explicit as to ward off even any shadow of a doubt about their meaning. It could hardly be more definitely stated that a township board has no authority to allow any claim whatsoever unless 'verified by affidavit.' Requiring such verification of the claim is an additional safeguard to the public funds. The facts stated in support of the claim are confirmed by the affidavit of the claimant. Because of the affidavit, the claim becomes a solemn, formal declaration stated before an officer of the law to be true; it is fortified because of the prohibition against making a false affidavit."

Section 14016, supra, is couched in the same positive language, and its effect is entitled to just as much verity, we believe, as the section the Court was then construing was entitled to and given by the Court.

There are no other powers given to the board of directors or to the trustee of such township respecting the disposition of funds of the township or the special or general road districts within the townships further than those contained in said Chapter 101. We find no authority in said Chapter to permit this surplus funds to be divided among the special road districts within the townships. We think Section 14015 means just what it says, and that the trustee must hold such funds until needed to pay township expenses.

Our Supreme Court has always held consistently that public funds are trust funds, and that their disposition must be authorized by law. The Court has likewise held consistently that officers and bodies politic acting through them take their authority in the handling and disposition of public funds only

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from the statutes. We find no case in this State where the Court has construed this particular Section 14015, but by analogy we think the decision rendered by Judge Douglas in the Gentry County case is controlling here, and therefore all of the statutes of said Chapter 101, supra, are devised for the protection and preservation of the public funds where the same are mentioned in said statutes.

An analogous case is one growing out of the handling of school funds. This question was treated in the case of Montgomery County vs. Auchley, 103 Mo. 492, where the Court, l.c. 502, said:

"\* \* \* The solution of this question will depend largely upon the power of the county courts in regard to school funds. That they are simply trustees of these funds will not be disputed. All powers they possess in regard to them are derived from the statutes. \* \* \* "

Our Supreme Court in the case of Morrow vs. Pike Co., 189 Mo. 610, l.c. 622, of the same question said:

"\* \* \* It is a trust fund, and the county court is merely a trustee to carry out the policy defined by the lawmaking power in relation to the fund (Ray County to use v. Bentley, 49 Mo., l.c. 242); It may not divert the general county revenue to its protection, and, on the other hand, it can not apply the school fund to the payment of ordinary county debts. \* \* \* "

In the case of Ray County vs. Bentley et al., 49 Mo. 236, l.c. 242, cited in the Pike County case, supra, our Supreme Court held to the same rule in the following language:

"\* \* \* The County is not the owner of the fund; the title is simply vested in it as trustee, for convenience, to carry out the policy devised by the lawmaking power for the appropriation and distribution of the fund. In the

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care, management and control of the fund, the County Court acts purely in an administrative capacity, not as the agent of the county, but in the performance of a duty specifically devolved upon it by the laws of the State. There is nothing judicial in the exercise of its functions in this respect. The County Court does not derive its powers from the county, and it can exercise only such powers as the Legislature may choose to invest it with. Whatever jurisdiction is conferred upon it is wholly statutory. \* \* \*

We have found no statute or decision of our Courts giving any authority for the surplus funds of the township mentioned to be divided among the special road districts within the township.

Your second question is whether a township may legally issue warrants against anticipated taxes within a given year.

Referring again to Section 13933 and Section 13976, as defining the powers of townships and the duties of the township board, we find that the townships have the right to make contracts, purchase and hold personal property and to use the same and make such orders for the disposition thereof as may be conducive to the best interest of the inhabitants of the township, and that the board of directors shall audit accounts of the township officer, audit all other accounts or demands legally presented to them, etc.

Section 13983, Article 9, of said Chapter 101 is as follows:

"When any claim or account, or any part thereof, shall be allowed by the township board of directors, they shall draw an order upon the township trustee in favor of the claimant for the amount so allowed-- said order to be signed by the president of said board, and attested by the township clerk and delivered to said claimant."

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By the terms of the statutes just referred to and quoted, when the township board carries on business for the township the persons with whom such business is transacted may come in at any time, upon filing a claim verified by affidavit, and demand and receive an order or "warrant" in acknowledgment thereof and as evidence that such person is entitled to be paid therefor out of township funds.

The issuing of the warrant or order for the payment of material or services by a township board is merely making a promise in writing to pay. It has been held that a county warrant is to all intents and purposes, a promissory note of the county.

In the case of International Bank of St. Louis vs. Franklin County, 65 Mo. 105, l.c. 112, Judge Sherwood so stating said:

"\* \* \* In short, it is to all intents and purposes the promissory note of the county. \* \* \*"

The same statement of the office and effect of a county warrant was made by the St. Louis Court of Appeals in the case of Steffen vs. Long, 165 Mo. App. 254, l.c. 258, where it is said:

"\* \* \* A warrant is, in legal effect, a promissory note. (International Bank of St. Louis v. Franklin County, 65 Mo. 105.) \* \* \*"

We think the same rules that apply to the effect of issuing and payment of county warrants would apply to township warrants in counties having adopted township organization.

The case of State ex rel. Vaughan vs. Appleby et al., 136 Mo. 408, was a case where the Supreme Court had before it, in construing a statute, a question very similar to the second question propounded here. That was a case also of paying county warrants, but we think it will apply here as a guide, there being no statute prohibiting the township board from so doing.

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The Court in the Appleby case on this point, l.c. 412, said:

"\* \* \* We must assume that the legislature intended that all just and proper liabilities of the county, created in one year, should be paid out of the revenues and income of that year. The provisions for dividing and apportioning the revenues to be collected for the year into the various funds does not contemplate that a just demand against the county should go unpaid because the revenue appropriated to the particular fund, out of which it is primarily payable, may have been exhausted, if there be money in the treasury unappropriated, or not needed for the purposes for which it was appropriated, from which it can be paid. \* \* \* "

On the same principle our Supreme Court in the case of State ex rel. Bank vs. Johnson, 162 Mo. 621, l.c. 629, in construing a statute respecting the payment of county warrants said:

"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.' "

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If then the township may under the above statutes contained in said Chapter 101 contract indebtedness within any year's estimated income, and it may do so under the terms of our Constitution above quoted, and under the township organization statutes; and if it is the right of a claimant to have the order or "warrant" issued for his services or contractual relations of furnishing material or otherwise, and by the terms of Section 13983 he is so entitled, there would seem to exist the right on the part of the township directors to issue such warrants against the anticipated taxes within that year, under the above statutes and authorities cited.

#### CONCLUSION.

It is, therefore, the opinion of this Department:

1) That if after township expenses have been paid by a township in counties having adopted township organization, there remains a surplus of taxes accumulated from a general township levy, such surplus funds may not be divided among the special road districts within the township, but such surplus must be held by the trustee of the township until needed to pay township expenses, and,

2) That a township in counties having adopted township organization may, in any year, legally issue warrants against anticipated taxes for that given year, provided they do not issue warrants in excess of such estimated taxes for such year.

Respectfully submitted,

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APPROVED:

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