

COUNTY BUDGET: County Court of Stoddard County should issue warrants  
COUNTY COURT: for that part of the salaries of county officers of  
such county for which warrants have not been issued  
for the year 1946. Upon refusal of County Court to  
do so, mandamus is proper remedy to compel such action.  
Such warrants should be paid before warrants issued on  
class 5 fund of the budget.

February 27, 1947



Honorable Joe C. Welborn  
Prosecuting Attorney  
Stoddard County  
Bloomfield, Missouri

Dear Sir:

This is in reply to your letter of recent date, requesting  
an official opinion of this department, and reading as follows:

"Stoddard County is a third class County  
under township organization. In 1946 the  
expenses of the County exceeded the revenue  
which had been collected at the end of the  
year. The County Court, instead of issuing  
warrants for the full salaries of the effi-  
cets, issued only warrants up to forty per  
cent of the salaries. This forty per cent  
has been paid and the Collector is now about  
to pay class five warrants. Some of the of-  
ficers have applied to the County Court for  
warrants for the remainder of their salaries.  
I have advised the County Court that they  
should issue these warrants, but the County  
Clerk refuses to issue such warrants, because  
he says that there is no money in the Col-  
lector's hands out of which such warrants  
could be paid, and he would be liable on his  
bond.

"Applying the principles announced in Gill vs.  
Buchanan County, 346 Mo. 599, 142 S.W.2d 665,  
I believe the County Court should issue these  
warrants. The Supreme Court has rules in the  
Gill vs. Buchanan case that the County is lia-  
ble for an officer's salary whether it is set  
up in the budget and also regardless whether  
or not there are funds on hand for the payment  
of salaries.

"Therefore, the County is certainly liable to these officers for their salaries and I do not see how the County Clerk could be liable on his bond for issuing the same.

"All of the Class four obligations of the County have been met - with the exception of this sixty per cent of the salaries for which warrants have not been issued. There is money in the Treasury, and there is money still coming into the Treasury. I do not see how the class five warrants can be paid with the class four obligations remaining unpaid, nor do I see how the County Clerk can defeat the people with the class four obligations by refusing to issue the warrants and let the money go to class five obligations.

"Section 13824, R.S.Mo. 1939, provides: that it is the duty of the County Court to order payment of money found due by the County.

"The County Court has directed me to request an official opinion from you on the question of whether or not the County Court may issue warrants for these class four obligations."

Stoddard County, which is a county of the third class, is governed by the provisions of the Budget Act of Missouri, found in Revised Statutes Annotated, Sections 10910 to 10917, inclusive.

The case of Gill v. Buchanan County, 346 Mo. 599, 142 S.W. (2d) 665, holds specifically that a county court must include in its budget for each year the salaries of county officers, which salaries are set by the Legislature of this state, and if such salaries are not included in the budget by the county court, such salaries will be considered to be put in the budget by the Legislature of this state. The court, in the Gill case, said (346 Mo. 1.c. 606):

"\* \* \* 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, Article 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). 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' 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. (Emphasis ours.)

If the County Court of Stoddard County did comply with the clear mandate of the Budget Law and did include in the class 4 fund of the budget for such county the salaries of the county officers, we fail to see upon what ground a refusal to issue warrants to such officers for payment of their salaries could be based. If the County Court did not comply with the Budget Law and did fail to include in class 4 of the budget the salaries of

county officers as fixed by the statutes of this state, such failure to obey the law by the County Court in making out the budget does not affect the obligation of the county to pay these valid obligations imposed by the Legislature, since by the legislative acts the salaries are made a part of the budget.

That part of Section 10911, Mo. R.S.A., relating to the class 5 fund of the budget, and providing, "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," means that salaries other than those salaries of county officers provided for by the statutes of this state, if not estimated for in classes 1, 2, 3 or 4 of the budget, cannot be paid out of the funds in class 5.

As pointed out previously, the inclusion in the budget of salaries of county officers set by statute is mandatory, and an attempt of the County Court to leave out of the budget such statutory salaries is of no effect, because such salaries are included by the act of the Legislature. Therefore, since the salaries must be in the budget, those officers entitled to such salaries are entitled to have issued to them warrants for the amounts of their salaries.

It may be that Stoddard County does not have, or will not have, sufficient funds to pay all the obligations it contracted in 1946, but, as the Supreme Court points out in the Gill case, quoted supra, it is the discretionary obligations which must be held to be invalid, and not the mandatory obligations imposed by the statutes of this state, such as the county officers' salaries.

From your letter, we understand that there is money in the treasury of the county, but that the Treasurer is about to pay warrants issued on funds of class 5 of the budget. The warrants for the payment of the county officers' salaries must be paid before warrants issued on the funds of class 5 of the Budget Act are paid, as Section 10910, Mo. R.S.A., under which statute the budget for 1946 was made, and Section 10910 of House Bill No. 834 of the 6<sup>th</sup> General Assembly, effective July 1, 1946, both provide: "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."

If the County Court refuses to issue the warrants for the payment of the salaries of the county officers, the proper action

to be taken by the county officers is an action for mandamus. State ex rel. Spratley v. Maries County, 98 S.W. (2d) 623, 339 Mo. 577; Perkins v. Burks, 78 S.W.(2d) 845, 336 Mo. 248.

CONCLUSION

It is the opinion of this department that the County Court of Stoddard County should issue warrants for that part of the salaries of the county officers of such county for which warrants have not been issued for the year 1946. If the County Court refuses to issue such warrants, mandamus is the proper remedy to compel such action. Such warrants should be paid before warrants issued on the class 5 fund of the budget of Stoddard County.

Respectfully submitted,

C. B. BURNS, Jr.  
Assistant Attorney General

APPROVED:

J. E. TAYLOR  
Attorney General