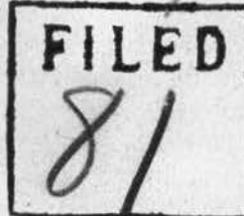


item
COUNTY COURT: County court has authority to transfer moneys
from one ~~budget~~ to another in Class 4 if found
COUNTY BUDGET: necessary and beneficial.

July 6, 1950

Honorable J. F. Selby
Judge of the Probate Court
Harrison County
Bethany, Missouri



Dear Judge Selby:

This is in reply to your request for an opinion which is as follows:

"I would like to have your opinion as to the transfer of our book and office supply budget to our salary budget here in Harrison County.

"Since we are in badly need of a Probate Clerk and the County Court only appropriated \$750.00 for extra help here in the office. We have ample money in our office supply budget to finish the year for books, etc, and also our extra salary for a Probate Clerk.

"We have been informed that the Court may transfer money from one budget to another if necessary."

A cardinal rule of construction is that in construing a statute its object and purpose must be kept in mind and such construction placed upon it as will, if possible, effect its purpose. *White v. Greenlee*, 85 S.W. (2d) 112, 337 Mo. 514.

The courts of Missouri have declared the purpose to be accomplished by the enactment of the County Budget Law in many cases. In the case of *State ex rel. Armontrout v. Smith*, 182 S.W. (2d) 571, the court stated at l.c. 574:

" * * * All of these acts, the Budget Act, the Purchasing Agent Act and the County Budget Act, were passed at the same session in 1933. Their primary purpose was to regulate the usual operation of the regular departments of Government whose needs could be foreseen and planned on a biennial basis. * * * "

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In the case of Bradford v. Phelps County, 210 S.W. (2d) 996, the court said at l.c. 999:

"It has been written a county court is only the agent of the county with no powers except those granted and limited by law and, like other agents, it must pursue its authority and act within the scope of its powers. Wolcott v. Lawrence County, 26 Mo. 272; State ex rel. Quincy, M. & P. R. Co. v. Harris, 96 Mo. 29, 8 S.W. 794; Jensen v. Wilson Tp., Gentry County., 346 Mo. 1199, 145 S.W.2d 372, 373; and now see again State ex rel. Kowats v. Arnold, supra, and Section 7, Article VI, Constitution of 1945. County courts as the managerial agents of the county have the duty to so manage the county's fiscal affairs as to comply with Section 26, Article VI, Constitution of Missouri, 1945, providing (inter alia) limitations on indebtedness of local governments. Section 10910 as amended, Laws of Missouri, 1945, pp. 610, 611, of County Budget Law, supra, Mo. R.S.A. § 10910. The County Budget Law makes it more expedient for the county court to perform its duty, that is, the County Budget Law provides '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. * * * "

And in the case of Gill v. Buchanan County, 142 S.W. (2d) 665, the court declared at l.c. 668:

" * * * 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."

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Your question, simply stated, is whether or not the county court may at this date transfer money from one budget of a department to another budget of the same department within a class.

Section 10911, R. S. Mo. 1939, provides:

"The court shall classify proposed expenditures in the following order:

* * * * *

"Class 4. The county court shall next set aside the amount required to pay the salaries of all county officers where the same is by law made payable out of the ordinary revenue of the county, together with the estimated amount necessary for the conduct of the offices of such officers, including stamps, stationery, blanks and other office supplies as are authorized by law. Only supplies for current office use and of an expendable nature shall be included in this class. Furniture, office machines and equipment of whatever kind shall be listed under class six."

And Section 10914, R. S. Mo. 1939, is in part as follows:

"The court shall show the estimated expenditures for the year by classes as follows:

* * * * *

"Class 4. Pay or salaries of officers and office expense. List each office separately and the deputy hire separately."

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We have already seen above that the purpose of the County Budget Law is to put the counties on a cash basis. In order to do this the county courts must estimate the expenditures for the year in advance. There are certain restrictions upon the transfer of funds from one class to another; however, we are unable to find any statutory restriction upon the transfer of funds within a class. While it is true that the county court is directed to prepare the budget at its regular February term, nevertheless, there does not appear to be any statutory limitation upon subsequent revision within the classes. The general rule concerning the powers of county courts to reconsider or rescind its orders is set out in 20 Corpus Juris Secundum at page 872, 873:

"Where a county board or court exercises functions which are legislative, administrative or ministerial in their nature and which pertain to the ordinary county business, see §§ 81-84, and the exercise of such functions is not restricted as to time and manner, it may modify or repeal its action, provided rights in third persons have not become vested thereunder; * * * *"

* * * * *

"A county board or court may at the term or session at which an order is made, revise or rescind it, provided this is done before any rights accrue thereunder. Ordinarily it has no power to do such act subsequent to such term or session, although there is authority to the effect that this rule is limited to judicial acts and is not applicable to legislative and ministerial acts."

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The action of the county court in preparing the classification of expenditures under the provisions of the County Budget Law has been held to be legislative in character. (Bash v. Truman, 75 S.W. (2d) 840, 843.)

In two Kentucky cases a similar question as to the right of reconsideration and revision of an order by a county court has been decided. In the case of Crick v. Rash, 229 S.W. 63, the court said at l.c. 65:

"Under ground (2) relied on in the petition in support of the injunction, the principal objection is that the fiscal court changed its orders a number of times after the entry of a prior one and after the adjournment of the court, which orders related to various administrative matters pertaining to the sale of the bonds, such as the appointment of commissioners for the handling of the proceeds, the roads upon which such proceeds or portions thereof should be expended, and other matters of similar nature. It is insisted that the fiscal court, being one of record, had no jurisdiction to change any of such orders after they had been made and after the term of court at which they were made was adjourned. But a sufficient answer to all this is that in the cases of Commonwealth v. Beauchamp, 136 Ky. 227, 124 S. W. 284, Crittenden County Court v. Shanks, 88 Ky. 475, 11 S.W. 468, 11 Ky. Law Rep. 8, and Scott v. Forrest, 174 Ky. 672, 192 S.W. 691, we held that the orders of the fiscal court as are here involved were legislative in their nature rather than judicial, and that they were subject to be revoked, modified, or altered at a subsequent term of the court, provided such modification, alteration, or renunciation did not affect previously acquired rights of any one who acted upon the faith of their original entry."

And again in the case of Sandy Hook Bank's Trustee v. Elliott Co. Fiscal Court, 58 S.W. (2d) 637, the court reiterated the above principle at l.c. 638:

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"The fiscal court is an executive as well as a judicial body. When it acts judicially its judgments may not be set aside at a subsequent term, except upon the grounds on which judgments of other courts may be set aside. But when it acts in its executive capacity its orders stand just as the orders of any other executive body. To illustrate, if the directors of a bank or a city council had made an order similar to that of October 9, clearly they could at a subsequent meeting set it aside. There was no consideration for it. It was simply a voluntary action on the part of the court, taken under its power to 'regulate and control the fiscal affairs and property of the county.' Ky. Stats. § 1840. Black's Law Dictionary, p. 461."

It is the duty of the county courts to see that the business of the county is transacted in an expeditious manner and one designed to secure the best services possible for the residents with the available money. Certain statutory restrictions have been placed upon the county court, but we do not find any which would not permit the transfer of moneys within a classification from one budget to another if the county court subsequently found that such transfer would promote the best interests of the people.

However, we believe that in the event of any such revision the applicable provisions of Section 10917, R. S. Mo. 1939, should be followed. That section reads:

"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

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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 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."

CONCLUSION

Therefore, it is the opinion of this department that the county court may transfer money from one item to another in Class 4 if such transfer is found to be necessary and beneficial to the county.

Respectfully submitted,

APPROVED:



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