

COUNTY BUDGET: County Court of Buchanan County not authorized
COUNTY AUDIT: to order county audit if cost for same is not
COUNTY COURT: included in County Budget and no emergency exists necessitating the audit to be ordered.

May 3, 1951

5-7-51



Honorable John E. Downs,
Prosecuting Attorney
Buchanan County,
St. Joseph, Missouri.

Attention: Gordon Shaffer, Jr.,
Assistant.

Dear Sir:

This will acknowledge receipt of your request that this office render an official opinion to you on the following question:

"I have been requested by the County Court of Buchanan County to submit to your office the following question for an official opinion. Can the County Court, pursuant to Section 55.180 of the Revised Statutes of Missouri of 1949, call an audit if they have not provided for the expense of such audit pursuant to the budget law--specifically Section 50.570 of the Revised Statutes of Missouri of 1949, wherein it sets forth that each department, office, institution, commission, or court of the county receiving its revenues in whole or in part from the county, shall prepare and submit to the Budget Officer, estimates of its expenditures for the next budget year.

"The County Court did not, in setting up its budget, provide for the expense of an audit for the year 1951. Since this expenditure has not been provided for, it would seem that under our budget law, the only source for the payment of the expense of an audit would be from the Emergency Fund as provided in Section 50.570 of the Revised Statutes of Missouri of 1949. This section states that transfers from said fund shall be made only for unforeseen emergencies. No emergency exists in Buchanan County which necessitates the calling of an audit, although the Court desires to call one at this time. The last audit in Buchanan County was conducted during the year 1947, and the County Court deems it advisable and desirable to have one at this time."

Section 55.180 RSMo. 1949, relating to second class counties, provides the accounts of the county may be audited every odd numbered year and you will particularly note that it is within the discretion

Honorable John E. Downs.

of the county court to determine whether an audit is necessary or desirable and said court may have such audit made every two years. Said section reads as follows:

"The accounts of the county may be audited, if the county court shall determine such an audit desirable or necessary, every odd numbered year within six months after the termination of the preceding fiscal year, either by a certified public accountant to be employed by the county court or by the state auditor, as said court may determine. If such audit is to be made by the state auditor, the state auditor shall be requested by the county court to make such audit, as provided by law. The audit herein provided shall also review the records of the receipts and disbursements and the property inventory of every officer or office of the county which receives or disburses money on behalf of the county or which holds property belonging to the county. Upon the completion of the investigation, the certified public accountant or the state auditor, as the case may be, shall render a report to the county court at the close of said period, together with a statement showing under appropriate classifications, the receipts and disbursements of the county during said period. The first audit, as provided by this section, may be made following the fiscal year of 1946, and such audit may be made every two years thereafter. The county court shall provide for the expense of such audit, which in no event shall exceed the sum of five thousand dollars, if made by a certified public accountant employed by the county court."

Section 50.570 RSMo. 1949 requires each agency receiving its revenues from the county to submit estimates of its requirements for expenditures in the following terms:

"On or before December first of each year, each department, office, institution, commission, or court of the county receiving its revenues in whole or in part from the county shall prepare and submit to the budget officer estimates of its requirements for expenditures and its estimated revenues for the next budget year compared with the corresponding figures for the last completed fiscal year and estimated figures for the current fiscal year. The expenditure estimates shall be classified to set forth the data by funds, organization units, character and objects of expenditure; the organization units may be subclassified by functions and activities, if so directed by the budget officer. The estimates shall be accompanied by work programs showing the work it is planned to do and the estimated cost thereof classified according to funds, organization units, character

Honorable John E. Downs.

and objects of expenditures. The estimates of revenues shall be prepared by the accounting officer and shall be classified so as to show the receipts by funds, organization units, and sources. The budget officer may direct that estimate forms be prepared and sent to such departments, offices, institutions, commissions and courts by the accounting officer and that the estimates shall be returned to the accounting officer for tabulation. If any department, office, institution, commission or court shall fail to return its estimates by December first, the budget officer shall make the estimates and such estimates shall be considered as the estimates of such department, office, institution, commission, or court.

"The budget officer shall review the estimates, altering, revising, increasing or decreasing the items as he shall deem necessary in view of the needs of the various spending agencies and the probable income for the year. He may direct any officer to appeal and explain his estimates or to present additional information. The budget officer shall then prepare the budget document in the form prescribed in the following section, and shall transmit it to the county court not later than December fifteenth. The budget officer shall have power to recommend and the county court shall have power to fix all salaries of employees, other than those of elective officers, except that no salary for any position shall be fixed at a rate above that fixed by law for such position. The budget officer shall provide in his recommendations, and the county court shall provide in its appropriation order, that an amount equal to not less than three per cent of the total estimated general fund revenues shall be appropriated each year as an emergency fund. At any time during the year the county court may, on recommendation of the budget officer, make transfers from the emergency fund to any other appropriation; provided, that such transfers shall be made only for unforeseen emergencies and only on unanimous vote of the county court.

"The budget officer shall hold public hearings before preparation of the budget document or before submission to the county court. All estimates, work programs, and other budget information shall be open to public inspection at any time."

Section 50.580, providing the annual budget shall present a complete financial plan, reads as follows:

Honorable John E. Downs.

"The annual budget of any such county shall present a complete financial plan for the ensuing budget year. It shall set forth all proposed expenditures for the administration, operation and maintenance of all offices, departments, commissions, courts and institutions; the actual or estimated operating deficits of surpluses from prior years; all interest and debt redemption charges during the year and expenditures for capital projects. In addition, the budget shall set forth in detail the anticipated income and other means of financing the proposed expenditures. All receipts of the county for operation and maintenance shall be credited to the general fund, and all expenditures for such purposes shall be charged to such fund; provided, that receipts from the special tax levy for roads and bridges shall be kept in a special fund and expenditures for roads and bridges may be charged to such fund. All receipts from the sale of bonds for any purpose shall be credited to the bond fund created for the purpose, and all expenditures for such purpose shall be charged to such fund. All receipts for the retirement of any bond issue shall be credited to a retirement fund for such issue, and all payments to retire such issue shall be charged to such fund. All receipts for interest on outstanding bonds and all premiums and accrued interest on bonds sold shall be credited to the interest fund, and all payments of interest on such bonds shall be charged to such interest fund. The county court may create such other funds as may be necessary from time to time."

Section 50.630 authorizes the transfer of any unencumbered appropriation balance within the same fund and transfers from the emergency fund as follows:

"The county court shall have power to authorize the transfer within the same fund of any unencumbered appropriation balance or any portion thereof from one spending agency under its jurisdiction to another; provided, that such action shall be taken only on the recommendation of the budget officer and only during the last two months of the fiscal year, except that transfers from the emergency fund may be made at any time in the manner herein provided."

The Missouri Supreme Court has held in *Gill v. Buchanan County*, 341 Mo. 727, 108 S.W. 2d. 340, 342, that "the purpose of the County Budget Law was 'to compel * * * county courts to comply with the constitutional provision (now Art. VI Section 26 (a)) by providing ways and means for a county to record the obligations incurred and thereby enable it to keep the expenditures within the income.'"

Honorable John E. Downs.

While the State Supreme Court held in the case of Gill v. Buchanan County (cited supra) that salaries of county officials which are fixed by the State Legislature are to be paid whether they are included within the county budget or not this was based upon the following reasoning by the court:

"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 obligation 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.

Honorable John E. Downs.

"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."

Unlike the payment of salaries which are fixed by mandate of the State Legislature and are by operation of law under this case included in the county budget, the audit of the county accounts is left within the discretion of the county court. The said court is not required to have an audit made but may in their discretion order an audit.

From the dictum in this case we infer that the cost of an audit would need to be included in the county budget or it could not be ordered by the county court and paid for from county funds. However, section 50.630 quoted supra authorizing the transfer of any unencumbered appropriation balance within the same fund or transfers from the emergency fund may make possible the payment of the costs of an audit ordered by the county court. You indicate in your letter, however, that this statute would not now be applicable because no emergency exists warranting an audit to be ordered by the court.

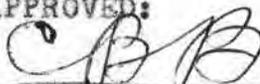
CONCLUSION.

The County Court of Buchanan County is not authorized to order the payment of the cost of an audit of the county accounts if the same has not been included in the County Budget and no emergency exists which necessitates the ordering of an audit which could be ordered paid from the emergency fund as provided in section 50.570, RSMo. 19491.

Respectfully submitted,

JOHN E. MILLS
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

JEM/ld