

COUNTY COURT : County Court of Buchanan County not authorized to
COLLECTOR : budget and pay the premium on the County Collector's
BOND : bond for period greater than the current year. Not
authorized to bind subsequent courts by paying premiums a year or years in advance of the current year.

June 20, 1951

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



6-20-51

Dear Sir:

This will acknowledge receipt by this office of your request for an official opinion on a question which you state as follows:

"After the passage of House Bill #193 on February 27, 1951, our County Collector furnished bond in the amount of \$45,000.00 to the satisfaction of the County Court. The County Court then authorized the payment of two years premium, which amounted to \$4,625.00 and in due time demand was made by the company for the two years premium, at which time the County Auditor refused payment, although said premium can be paid for out of income and revenue provided for in the year 1951.

"The question is--can our County Court authorize the payment of this premium under the facts set out above, i.e. by contracting and paying said premium out of income and revenue provided for in the year 1951?

"We have reviewed the cases of Book vs. Earl, 87 Mo. 246; Trask vs. Livingston Co., 109 SW 659; Ebert vs. Jackson, 70 SW 2d 918; Traub vs. Buchanan County, 108 SW 2d 340; Saleno vs. City of Neosho, 30 SW 190; and Gill vs. Buchanan County, 142 SW 2d 665 and the decisions therein do not prohibit this type of expenditure. These cases uniformly prohibit the anticipation of the revenue of any future year, and also prohibit the County Court from contracting in an amount exceeding the year's income in which the debt is contracted. We found no case which prohibits the expenditure as outlined above; however, we would appreciate an opinion from your office with reference to the questions hereinabove set out."

Surety bonds for the faithful performance of duty of a public official may be made to cover the term of office of the appointed or elected official and if such official is required to pay the premium on such bond he could enter into a contract for such premium payments as could be agreed upon by the surety company, In order to take ad-

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vantage of a slightly reduced rate an individual official in paying the premiums does frequently pay the premiums for his entire term of office.

However, in the question presented by you, the county court is to pay the premium on the county collector's bond, and it appears the county court is prohibited from contracting with any surety company to pay the current year's premium, i.e., for 1951, and in the same contract, attempt to bind the county to pay the premium for the following year, i.e., for 1952. Section 26(a), Article VI of the Constitution of Missouri, 1945, prohibits a county from becoming indebted in an amount exceeding in any one year the income and revenue provided for such year. Said section reads as follows:

"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."

This office has ruled in an opinion rendered by this department under date of January 12, 1948, to Honorable Ralph Baird, that a county court is prohibited under Section 26(a), Art. VI, quoted above, from becoming indebted in any year in an amount in excess of the income and revenue provided for such year and a contract between the county and the surety company for payment over a four-year term of premiums on a county treasurer's bond does not bind the county for more than one year. It appears clearly enough established that while a county court is authorized to pay the premium on a surety bond for one year they are not authorized to anticipate the income and revenue of the county for several years following the year a contract becomes effective and to obligate the county to pay a like premium for a year in advance of the effective date of the contract.

As your question is presented, however, we gather the county court proposed to pay the premium on the collector's bond for two years, i.e., from the time the county collector assumes office for a two-year period through 1951 and 1952, from revenue collected in 1951.

The County Budget Law, Chapter 50, RSMo 1949, attempts to establish the county on a cash operating basis. It does not contemplate that a county court should be empowered to incur obligations for a period of more than one year for current and routine operations, nor is it contemplated that one body acting as a county court should enter into contracts exceeding one year's duration which would bind a subsequent body acting as a county court in a matter dealing with routine operation. It does not appear from a reading of the County

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Budget Law that the county court is authorized therein to budget or pay from current revenue an obligation which would not become due until more than a year after the effective date of the contract. The whole of the Budget Law is replete with the concept that current operating expenses shall be met with the revenue collected in the year the indebtedness or obligation is incurred. Nowhere in the Budget Law is there any mention that the budget shall have included therein the anticipated expenditures for more than one fiscal year. But it is replete with such expressions as are found in Section 50.570, RSMo 1949, dealing with second class counties, which indicate that the county court should budget and pay from current revenue the current expenses incurred within one fiscal year for which the Budget is established:

"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.* * *"

We direct your attention also to part of Section 50.580:

"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 or surpluses from prior years;* * *"

And to part of Section 50.590:

"The budget document shall include the following:

"(1) A budget message outlining the fiscal policy of the government for the budget year and describing the important features of the budget plan, giving a general budget summary setting forth the aggregate figures of the budget in such manner as to show the balanced relations between total proposed expenditures and total expected income and other means of financing the budget compared with the corresponding figures for the last completed fiscal

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year and the current fiscal year, and including explanatory schedules classifying expenditures by organization units, objects, and funds, and income by organization units, sources, and funds; * * *".

These sections illustrate that the budget plan to be followed by the counties contemplates that the current routine operating expenses of the county should be entered in the budget and paid in the current fiscal year and such routine operating expenses should not be entered in the budget and paid two and more years in advance.

The duty is enjoined upon a county court to approve the surety bond posted by the county official in question. Let us presume, as an example, that a county court paid the premium on a bond for a four-year term for a county official or entered into a contract with a surety company to do so. The action of that court would clearly be an attempt to bind subsequent bodies acting as a county court and remove from such subsequent body the opportunity to exercise their discretion in approving a bond on which premiums have already been paid and the obligations under the bond have become fixed. It was not within the contemplation of the State Legislature to authorize such action by a county court under the County Budget Law.

CONCLUSION

The County Court of Buchanan County is not authorized to Budget and pay the premium on the county collector's bond for a period beyond the current year. The county court is not authorized to pay the premium on the bond for a year or years in advance of the current year.

Respectfully submitted,

JOHN E. MILLS
Assistant Attorney General

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APPROVED:



J. E. TAYLOR
Attorney-General