

COUNTY COURT:
COUNTY BUDGET:
NURSING HOMES:

Right of county court to expend proceeds of sale
of county farm during 1957 and 1958.



August 8, 1957

Honorable W. Frazier Baker
Prosecuting Attorney
Callaway County
Fulton, Missouri

Dear Mr. Baker:

This will acknowledge receipt of your opinion request which
reads:

"On February 28, 1957 and subsequent thereto,
the County of Callaway sold what was generally
called the Poor Farm or County Farm which was
owned and operated by the County of Callaway
under and by virtue of Sections 205.580 to
205.760 inclusive. The proceeds from the sale
of this farm have been deposited with the
treasurer of Callaway County, Missouri. An
opinion is requested, at the instance of the
County Court, and as to whether or not the
proceeds of this sale can be used by Callaway
County during the calendar year of 1957 or in
the calendar year of 1958.

"Opinion is also requested as to whether or not
the recent Nursing Home law passed by the legisla-
ture in the session ending previously in 1957
has any bearing upon the previous question."

We assume that your first inquiry specifically relates to the
authority of the county court to use the proceeds from the sale of
the county farm, during 1957, and for the purpose of constructing
and equipping a nursing home as authorized by Senate Bill 244,
passed by the 69th General Assembly of the State of Missouri,
approved by the Governor on June 10, 1957, and which becomes a law

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and effective on August 29, 1957. We believe that it can further be assumed that your budget for the year 1957 does not include any such item of expenditure. Therefore, the first thing to determine is if the county can make any expenditure for any item during 1957, that is not included in the budget for that year.

Section 7, Article VI, Constitution of Missouri provides that the county court shall manage all county business as prescribed by law.

Section 24, Article VI, Constitution of Missouri, requires counties as prescribed by law, to have an annual budget, file annual reports of their financial transactions and be audited.

Under Section 49.270, RSMo 1949, the county court is vested with control and management of all property belonging to the county. Furthermore, the county court, under Section 50.680 is authorized, empowered and directed, at the February term of court every year, to record and file with the county treasurer and state auditor a budget of estimated receipts and expenditures for the year beginning January 1, and ending December 31, and that section further requires the county court to classify proposed expenditures.

Section 50.670, RSMo 1949, provides that all counties of the third and fourth classes shall be governed by Sections 50.670 to 50.740, RSMo 1949.

Section 2 of Senate Bill 244, supra, authorizes the use of county funds, generally, to construct and equip nursing homes and that the expenditure is not limited to proceeds of the sale of a county farm. Said section reads:

"(2) The county court of any county may acquire land to be used as sites for, construct and equip nursing homes and may contract for materials, supplies and services necessary to carry out such purposes."

All of the foregoing statutes and constitutional provisions clearly indicate that the general intent in enacting and adopting same was that all county business shall be operated on a cash basis for the fiscal year, January 1 to December 31, and not to exceed the anticipated revenue for the fiscal year and any unexpended balances for prior years.

The Supreme Court of Missouri, en banc, in State vs. Gribb,

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273 S.W.(2d) 246, l.c. 250, said:

"[6] The object of the constitutional provision, Sec. 26(a) of Article VI, and the 'County Budget Laws,' supra, is to compel counties and municipalities to operate on a cash basis. In other words, the governing body may not obligate the county or municipality in a sum in excess of the revenue provided for any one year. The sum available to be spent in any one year is the revenue provided for that year 'plus any unencumbered balances from previous years.' Sec. 26(a) supra. We rule that the County Court of Macon County in 1952 did not, in the matter of expenditures, violate the provisions of the Budget Law."

The court in that decision further held that it is common knowledge that unforeseen events often occur which require expenditures in excess of the amount assigned to certain classes and if the budget for such class is not sufficient to take care of same, the county court may use money in class 6, provided, however, there is a sufficient sum in that class not subject to restrictions mentioned in the statute. In so holding the court, at l.c. 249 and 250, said:

"[3-5] It will be noted that the funds assigned to Class 6 may be expended with certain restrictions for 'any lawful purpose'. (Emphasis ours.) One of the restrictions imposed is that 'there is actually on hand in cash funds sufficient to pay all claims provided for in preceding classes together with any expense incurred under class six; * * * * *.' In other words, the funds in Class 6 may not be depleted unless the funds in the other classes are sufficient to pay all claims contracted to be paid out of the funds in such classes. The intention of the Legislature, as evidenced by the provisions supra, established Class 6 somewhat as a guarantee that all claims in the preceding classes shall be paid. It is common knowledge that unforeseen events often occur which require expenditures in excess of the amount assigned to a certain class such as Class 3, the bridge and road fund. If the budget for such class is not sufficient to take care of the unforeseen expense, the county

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court may use money in Class 6, provided there is a sufficient sum in that class that is not subject to the restrictions mentioned in the statute. It is apparent that that was done in this case when it became evident that Class 3 expenditures might exceed the sum allocated to that class by the budget."

In view of the foregoing decision in State v. Cribb, supra, we are inclined to believe that any such expenditure of money as proposed herein would be considered as a lawful purpose in view of Senate Bill 244 becoming effective on August 29, 1957, notwithstanding the fact there was no such item of expense included in the budget for 1957. Such proposed expenditure would amount to an unforeseen event as referred to in said decision.

As to whether the proceeds of said sale could be used during 1957, our answer is in the affirmative since such money under the statute is not specifically allocated to any particular fund, as in the case of the sale of personalty, farm products, or equipment, at said county poor farm wherein the law requires moneys received from the sale thereof to go into a particular fund to be used in a certain manner. The proceeds from this sale would go into the general revenue fund of the county (see copy of attached opinion to Honorable A. B. Wright, under date of September 28, 1945) and could be used for the purpose of constructing and equipping a nursing home as provided only after satisfaction of payment of all items budgeted for 1957 in all classes, including class 6, and also provided that all outstanding warrants under any class for all prior years have been fully satisfied.

We believe that the foregoing answers your second inquiry as well as your first inquiry.

CONCLUSION

Therefore, it is the opinion of this Department that proceeds from the sale of the county poor farm in Callaway County may be used to construct and equip a nursing home as provided in Senate Bill 244, passed by the 69th General Assembly, and which becomes effective August 29, 1957, during the current year 1957, provided there are sufficient funds on hand for the payment of all items

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included in the budget approved by the county court for 1957, including those in class 6, and, further, that all warrants drawn under all classes for all prior years are fully satisfied.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Aubrey R. Hammett, Jr.

Yours very truly,

John M. Dalton
Attorney General