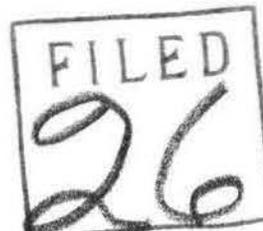


COUNTY BUDGET  
COUNTY BUDGET LAW:  
COUNTIES  
COUNTY COURT:

County Court of third Class county may expend funds not otherwise allocated out of class 5 of annual budget for the acquisition, storage and distribution of surplus agricultural commodities under a program authorized by Senate Bill 143, 71st General Assembly; if funds in Class 5 are insufficient, county court may supplement financing with Class 6 funds, as long as there is cash on hand in excess of funds already encumbered and amounts allocated to Classes 1 to 5.

May 19, 1961

Honorable Joe R. Ellis  
Prosecuting Attorney  
Barry County  
Cassville, Missouri



Dear Mr. Ellis:

This department is in receipt of your request for our official opinion which reads as follows:

"Barry County is a third class County. The County Court of Barry County has been asked to enter into an agreement with the State Department of Public Health and Welfare, Division of Welfare, concerning the receipt, storage, distribution and accounting of commodities furnished by the United States Department of Agriculture in connection with a program for the disposal of Surplus commodities to needy citizens instituted by the Federal Government.

"In order to carry out this program the Court must hire the necessary personnel, rent the necessary storage space and meet the other financial requirements that will result from this program.

"The County Court has not budgeted for this program, having had no knowledge of it, prior to the formation of their budget for 1961.

"My question is as follows: Can the County Court of Barry County take from the General Revenue fund, of the County, the necessary funds to institute and carry out the program described above?"

Senate Bill No. 143, 71st General Assembly, was signed by the Governor on April 10, 1961. Due to the fact that this bill contained an emergency clause it is presently in effect. It reads as follows:

"Be it enacted by the General Assembly of the State of Missouri, as follows:

Section 1. Any county or any city not within a county may establish a program for the acquisition, storage and distribution of surplus agricultural commodities to needy persons pursuant to acts of the congress of the United States, and may rent, lease or otherwise provide the necessary storage and distribution facilities therefor. The county or city may enter into contracts or agreement with any other county or city not within a county for the establishment and operation of a joint program or for the joint use of facilities or services.

Section 2. The director of the division of welfare of the department of public health and welfare shall make and promulgate necessary and reasonable regulations for the administration of the programs established pursuant to section 1, and for the certification of the eligibility of recipients of the commodities.

Section 3. The division of welfare of the department of public health and welfare shall, on or about the fifteenth day of each month reimburse any county or city not within a county in an amount equal to fifty per cent of the sum expended by the county or city for the acquisition, warehousing and necessary cold storage, safekeeping, maintenance of proper records and distribution of surplus agricultural commodities during the preceding month; provided the expenditures have been approved by the division of welfare.

Section 4. The provisions of this act shall expire two years from the effective date of this act.

Section 5. Because of the present economic conditions and because of the prevalent need for surplus agricultural commodities which the government of the United States is making available for distribution, this act is necessary for the immediate preservation and advancement of the health, safety and public welfare of the state, and an emergency is declared to exist within the meaning of the constitution and this act shall be in full force and effect from and after its passage and approval."

This bill clearly authorizes the expenditure of county funds to carry out the program for which provision is made therein. The question raised by you relates to the source of the funds in view of the fact that no express provision for such expenditures was made in the county budget for the current year.

The pertinent statutory provisions, applicable to county budgets in third and fourth class counties, are contained in Section 50.680, RSMo 1959, which reads in part as follows:

"Classification of proposed expenditures -- the court shall classify proposed expenditures in the following order"

\* \* \* \* \*

Class 5. The county court shall next set aside a fund for the contingent and emergency expense of the county, the court may transfer any surplus funds from classes one, two, three, four to class five to be used as contingent and emergency expense. From this class the county court may pay contingent and incidental expenses and expense of paupers not otherwise classified. 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."

"Class 6. After having provided for the five classes of expenses heretofore specified, the county court may expend any balance for any lawful purpose; provided, however, that the county court shall not incur any expense under class six unless 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; provided, that if there be outstanding warrants constituting legal obligations such warrants shall first be paid before any expenditure is authorized under class six."

As stated above, Senate Bill 143 became law on April 10, 1961, The 1961 budget of Barry County was approved by the county court on January 23, 1961. Since the program in question was not authorized until after the county budget was prepared, any expenditure for this purpose obviously is of an emergency or contingent nature, and it is our opinion that, under any interpretation of the statutory provisions relating to class 5, funds in Class 5 which are not allocated for other purposes may be used for this

purpose. In this connection we direct attention to the case of Everett v. County of Clinton (Mo. Sup. 1955) 282 S.W. 2d 30. In that case the county court had contracted for the purchase of road machinery, and was paying for it from Class 5 funds. The court had known that the county's old road machinery needed replacement but had not budgeted for the new machinery. There were ample unallocated funds in Class 5 to make the payments. The court held that the cost of the new machinery was a contingent expense and that Class 5 funds could be used to pay for the new machinery.

If a county has not provided enough money in Class 5 to defray all of the expenses incurred in connection with the surplus commodities plan, any amount in Class 6 of the county budget may be expended for this purpose. As authority for this proposition we direct attention to State v. Cribb (1954), 273 S.W. 2d 246, where the Supreme Court of Missouri stated (l.c. 273 S.W. 2d 249):

" \* \* \*[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 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."

Under this case, the county court may supplement the financing of the surplus food plan from Class 6 funds, if the county has enough cash on hand to pay all existing obligations and all items budgeted in Classes 1 through 5.

#### CONCLUSION

It is the opinion of this department that a county court of a third class county may use funds in Class 5 of its annual budget,

which are not allocated for other purposes, to pay for the acquisition, storage and distribution of surplus agricultural commodities to needy persons under a program authorized by Senate Bill No. 143, 71st General Assembly. It is further our opinion that, if the funds provided in Class 5 are insufficient to meet all the expenses incurred under this plan, Class 6 funds may be used, as long as there is cash on hand in excess of funds already encumbered and amounts allocated to Classes 1 to 5.

The foregoing opinion, which I hereby approve was prepared by my Assistant, Ben Ely, Jr.

Yours very truly,

THOMAS F. EAGLETON  
Attorney General

BE:ms

*Encls*  
*James Paul 7-8-59*  
*Robt. L. Lamar - 9-29-55-*