

COUNTY TREASURERS: County treasurer must pay or protest
COUNTY COURTS: warrant drawn on fund properly budgeted
COUNTY BUDGET: even though anticipated revenues as
WARRANTS: budgeted may exceed revenues actually
collected.

July 25, 1961



Honorable Bernard W. Gorman
Prosecuting Attorney
Atchison County
Rock Port, Missouri

Dear Sir:

We are in receipt of your letter requesting an opinion of this office, which letter reads as follows:

"Atchison County is in the financial condition where during the current year the amount of protested warrants may exceed taxes payable during the year. Because of this condition the county treasurer has asked me to request your opinion on the following question:

What is the financial limit of the County Treasurer on protested warrants in a Third Class County with county organization in Class No. 3 Special Road and Bridge Fund?

"That is, may he accept protested warrants beyond the anticipated revenue for the current year?"

It appears from information subsequently supplied by you and by the Treasurer of Atchison County that you have reference to a situation in which expenditures budgeted by the county court on the basis of anticipated revenue for the year in the Special Road and Bridge Fund may exceed revenues actually paid into that fund and that you wish to know whether the Treasurer may continue to protest warrants drawn on that fund.

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The County Budget law, as applicable to third class counties, Sections 50.670 thru 50.750, RSMo 1959, requires the county court to prepare an annual budget in which anticipated revenues are estimated in accordance with a statutory formula and balanced against proposed expenditures classified according to a prescribed priority. Section 50.740(3) provides a sanction for violation of the Budget law, as follows:

"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 of payment of any such warrant shall be liable therefor upon his official bond."

The county treasurer acts in a ministerial capacity in paying warrants drawn by order of the county court and normally has no choice but to pay such warrants or to protest warrants drawn on a fund in which there is not sufficient money for payment. In fact, a misdemeanor penalty is imposed by Section 54.140, RSMo 1959, for his failure or refusal to do so. In *Jackson County v. Fayman*, 44 SW2d 849, the Supreme Court said, l.c. 857:

"Much is also said as to the heavy penalties imposed on county treasurers as ministerial officers in refusing to pay county warrants regularly issued by the county and presented for payment. It is true that such ministerial officers are not and should not be required to investigate and determine for himself the legality or validity of such warrants, and should ordinarily pay same without question. * * *"

However, in view of the liability prescribed by Section 50.740(3), supra, it is apparent that county officers participating in the issuance or payment of a warrant must inquire into the validity of a warrant to the extent of ascertaining that its issuance does not violate the County Budget law. In *State ex rel. Ginger v. Palmer*, 198 SW2d 10, a county clerk

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was held liable on his bond under this section for issuing warrants drawn on order of the county court on the Special Road and Bridge Fund where the county court had not included the anticipated revenues and proposed expenditures for the fund in the budget.

The question of warrants issued within the budgetary limitation on anticipated revenue where such revenue was not actually collected was considered by the Supreme Court in *State ex rel. Clark County v. Hackmann*, 218 SW 318. The Court said, 1.c. 320:

"II. In the very lucid brief of the Attorney General for respondent it is said:

'The only manner by which an indebtedness in excess of the income and revenue for any year may be lawfully created is with the assent of two-thirds of the qualified voters voting at an election held for that purpose, as provided by section 12 of article 10 of the Constitution.'

"[1] This is a true statement of the situation, if you read into it what this court has repeatedly said, as we have outlined in the previous paragraph. That is to say an indebtedness contracted in excess of the anticipated revenue is invalid, but an indebtedness contracted within the anticipated year's revenue is valid, although all of the anticipated revenue may not be collected. It is the revenue which is provided for and should come into the county treasury, during the year, that fixes the status (as to validity or invalidity) of the indebtedness contracted during the year, rather than the revenue actually collected and paid out on warrants. We should probably use the term 'income and revenue' as distinguished counsel have used, because the receipts of a county may come from several different sources.

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"So, too, when this court has said (and rightfully so) that the purpose of sections 11 and 12 of article 10 of the Constitution was to place the business of the counties upon a cash basis, we did not mean that debts contracted within the anticipated revenues of the year were invalid, because the collected revenues were insufficient to meet all of such debts. Nor did we mean by such expression that warrants issued for such debts were invalid, because all of them could not be paid out of the revenue actually collected. Nor did we mean that each debt should be met with cash, but we did mean that during the fiscal year the cash would be available to meet the debt if the anticipated revenue was collected and rightfully disbursed. In other words, we have dealt with the matter upon the basis of a year's business, and the term 'cash basis' has been used in the sense that the anticipated revenues of the year should at least equal the contracted debts of the year. Such has been our construction of the constitutional system, and as suggested by counsel for respondent, and if the county desired to contract debts in excess of the year's revenue, resort would have to be made to the people for their consent to the creation of such debt."

It should be noted also that the preparation of the budget and the estimate of anticipated revenue is the exclusive responsibility of the county court. Nowhere in the Budget law is it provided that an estimate of anticipated revenues shall be made by the county treasurer or that he shall look behind a budget prepared in accordance with the statutory formula. The anticipated revenue of the county for the current year is the amount which the county court has estimated to be such in the annual budget and it is this amount that marks the limit of county spending for that year.

CONCLUSION

In view of the foregoing, it is the opinion of this office that a county treasurer must perform his ministerial duty in

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paying or protesting warrants, as the case may be, so long as said warrants are for expenditures contemplated by the county budget and within the estimate of anticipated revenue contained in that budget. The fact that there is a possibility that the total revenue collected may not come up to the revenue anticipated by the county court does not alter the treasurer's duty, absent any showing of fraud in the preparation of the budget.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, James J. Murphy.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

JJM:ml