

BUDGETS:
POLITICAL SUBDIVISIONS:

Political subdivisions referred to in Chapter 67, RSMo Cum. Supp. 1961, making expenditures without full compliance with such law causes those expenditures to be illegal.

OPINION NO. 53 (62) 461 (61)

April 11, 1962

Honorable William Baxter Waters
Member, Missouri State Senate
First National Bank Building
Liberty, Missouri



Dear Senator Waters:

This opinion is in reply to your inquiry concerning Senate Bill No. 171, passed by the 71st General Assembly and amending Chapter 50, RSMo 1959, by adding one new section to said chapter, and enacting ten new statutes which have been placed in a new Chapter 67, RSMo Cum. Supp. 1961, entitled "Budgets For Political Subdivisions", composed of statutes numbered Section 67.010 to 67.100, inclusive. The specific question posed is extracted from your inquiry and reads as follows:

"I should, therefore, like to request an official opinion from your office that if the provisions of the act are not complied with by a political subdivision of this state, as defined under the act, are expenditures thereafter made legal expenditures?"

Article VI, Section 24, Missouri's Constitution of 1945 provides:

"As prescribed by law all counties, cities, other legal subdivisions of the state, and public utilities owned and operated by such subdivisions shall have an annual budget, file annual reports of their financial transactions, and be audited."

Section 67.010, RSMo Cum. Supp. 1961, describes the objective of this new law and reads, in part, as follows:

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"1. Each political subdivision of this state, as defined in section 70.120, RSMo, except those required to prepare an annual budget by chapter 50, RSMo, and Sections 167.130, 167.160, 167.200, and 167.240, RSMo, shall prepare an annual budget. The annual budget shall present a complete financial plan for the ensuing budget year, and shall include at least the following information: * * *."

"Political subdivision" is defined in the following language from Section 70.120, RSMo 1959:

"* * * (2) 'Political subdivision' shall mean any agency or unit of this state which now is, or hereafter shall be, authorized to levy taxes or empowered to cause taxes to be levied."

Section 67.080, RSMo. Cum. Supp. 1961, provides:

"The expenditure orders, motions, resolutions, or ordinances approved or adopted and filed as provided herein, and the transfers made as provided herein, shall constitute the authorization for the expenditure of money for the budget year. No expenditure of public moneys shall be made unless it is authorized as provided herein". (Underscoring supplied.)

Section 67.100, RSMo. Cum. Supp. 1961, provides:

"Each political subdivision covered by the provisions of this chapter shall prepare and approve a budget and shall authorize expenditures in the manner provided herein for each fiscal year which begins after June 30, 1962, and this chapter shall apply to each such budget and expenditure authorization."

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When we consider the purpose of the new law as expressed in Section 67.010, supra, the positive and mandatory language found in Section 67.080, supra, stating that "no expenditure of public moneys shall be made unless it is authorized as provided herein", and the language found in Section 67.100, supra, making the preparation and approval of an annual budget mandatory as to the "political subdivisions" affected, after June 30, 1962, a reasonable conclusion is inescapable that the new law on its face will cause expenditures made in disobedience to the law to be illegal expenditures.

Missouri's statutes applicable to annual budgets to be prepared by counties as political subdivisions of the State have been construed by our courts and decisions rendered in such cases may be looked to in order to support the conclusion to be reached in this opinion. In the case of Missouri-Kansas Chemical Corporation v. New Madrid County, 345 Mo. 1167, 139 S.W. 2d 457, the Supreme Court of Missouri was construing the county budget law and was particularly concerned with the following language of such law now found at paragraph 3 of Section 50.740, RSMo 1959:

"3. 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 and effect; * * ."

The items of expenditure made in the New Madrid County case, cited above, were in excess of the budget allowances therefor in the respective years involved, and in the light of that portion of Section 50.740, RSMo 1959, quoted above, the Supreme Court spoke as follows at 345 Mo. 1167, 1.c. 1169:

"On the record made any order of the county court seeking to effect the payment of the balance due, under the quoted provision of Sec. 8, supra, would be void and of no binding force and effect."

In the case of Traub v. Buchanan County, 341 Mo. 727, 108 S.W.2d 340, the defendant county defended against a claim on the grounds that the county budget law was not complied with in relation to the contracts. In such case the claimant advanced argument which the Supreme Court interpreted as a

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contention that the county, appellant, was estopped to assert the invalidity of the contracts. With reference to such contention the Supreme Court spoke as follows at 341 Mo. 727, l.c. 732:

"We need not discuss this question at length, because in a recent case, decided by the United States Circuit Court of Appeals, Eighth Circuit, this identical situation was fully considered. [See Layne-Western Co. v. Buchanan County, Missouri, 85 Fed. (2d) 343.] There, a contractor, who had performed his contract, sued the county to recover the contract price. Noncompliance with the budget law was the principal defense of the county. The court discussed the doctrine of estoppel and held that the established rule in Missouri is, that the county was not estopped to make the defense in question."

The Supreme Court of Missouri, in Traub v. Buchanan County, supra, quoted Judge Stone in the Layne-Western case, cited above, as follows at 341 Mo. 727, l.c. 732:

"The Missouri rule is that where the statute expressly states that, unless certain things are done, a contract by a political subdivision or a municipal corporation shall be invalid, there can be no estoppel urged to support the contract. * * *"

A close reading of Section 67.080, RSMo. Cum. Supp. 1961, quoted in the forepart of this opinion demonstrates that the steps prescribed to be taken by the Act form the basis for the authority to be exercised thereunder, and such statute then concludes that "no expenditure of public moneys shall be made unless it is authorized as provided herein". If expenditures are prohibited, it follows that by their nature they will be invalid. Of special application to the question of powers here being considered, we quote from Mullins v. KansasCity, 268 Mo. 444, l.c. 460-461, 188 S.W. 193:

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"Statutes and charter provisions constitute powers of attorney to the officers of municipalities, beyond which such officers may not go. Those dealing with such agents of municipalities must be held to know these statutory and charter powers which effectually limit such officers' powers and radius of action. Officers of municipalities are not general agents; they are special agents, whose duties are set forth in the statutes which create them and which define their powers, and of these statutes, and therefore of these officers' powers, the public which deals with them must take notice and govern themselves accordingly."

Decisions referred to and quoted above disclose that a political subdivision of the State is not estopped from denying claims made against it growing out of contracts which have not been effected and carried out according to statutory provisions in relation thereto. For Section 67.080, RSMo. Cum. Supp. 1961, to conclude that "no expenditure of public moneys shall be made unless it is authorized as provided herein" is tantamount to saying that expenditures made without full compliance with such law are illegal.

In enacting this law the legislature was not unmindful of possible delays which might prevent a political subdivision from having its budget approved and adopted at the very beginning of a current fiscal year, thereby jeopardizing necessary expenditures for "operation and maintenance" so vital to the proper functioning of a political subdivision. With a view to alleviating such a situation, Section 67.070, RSMo. Cum. Supp. 1961, was included in this law and reads as follows:

"If at the beginning of any fiscal year any political subdivision has not approved or adopted and filed the budget and the expenditure orders, motions, resolutions, or ordinances required herein for the current fiscal year, and except as otherwise

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provided by law or charter the several amounts authorized in the expenditure orders, motions, resolutions, or ordinances for the next preceding fiscal year for the objects and purposes specified therein, so far as the same shall relate to operation and maintenance expenses, shall be deemed to be reappropriated for the several objects and purposes specified in said expenditure orders, motions, resolutions, or ordinances, until such time as the budget and the expenditure orders, motions, resolutions, or ordinances for the current fiscal year are approved or adopted and filed as required herein."

CONCLUSION

It is the opinion of this office that political subdivisions referred to in Chapter 67, RSMo Cum. Supp. 1961, making expenditures without full compliance with such law causes those expenditures to be illegal.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Julian L. O'Malley.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

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