

Opinion Request No. 126
answered by letter.

August 14, 1962

Honorable Garner L. Moody
Prosecuting Attorney
Wright County
Mansfield, Missouri



Dear Mr. Moody:

This office is in receipt of your request for a legal opinion upon the inquiry presented in your letter and in a subsequent letter, dated May 22, 1962. The factual situation, as well as the question for which an opinion was requested is given in greater detail in your second letter.

Reference is made in both letters to Section 262.597, RSMo Cum. Supp. 1961. This section authorizes a county court to appropriate in Class 4 of the county budget a sum sufficient to take care of the county's part of the expense of county agricultural extension work. Under paragraph 4 of the section, in counties with an assessed valuation of more than \$10,000,000.00 and less than \$15,000,000.00, the county court shall appropriate the minimum sum of \$2,500.00 for this purpose.

You advise that Wright County is in the assessment bracket set out in Paragraph 4 of Section 262.597, but the county court of said county has appropriated only \$1,500.00 for county extension work. Since there are no funds available for payments not budgeted, you question whether or not the court must make an appropriation to extension service of more than \$1,500.00. We understand the question for an opinion to be:

"I would like to know if the Court must or may pay the additional \$1,000.00 and from what funds such sum could be paid since it was not budgeted."

This office rendered an opinion to Honorable Leo Mitchner, County Clerk of Ripley County, on April 23, 1948, in which the factual situation was similar to that involved in the present inquiry. From the factual situation of the former opinion it appears the Ripley County Court had appropriated \$1,500.00 in Class 2 of the 1948 budget for expense of holding circuit court, and nothing was appropriated in the budget for the Ripley County Farm Bureau.

As the result of a mandamus suit in Circuit Court, the County Court had been ordered to appropriate \$1,000.00 to the Farm Bureau, and by its order, the County Court transferred \$1,000.00 from Class 2 to Class 4, for the Ripley County Farm Bureau.

It was pointed out in said opinion, Section 10914, RSMo 1939, permitted the County Court to transfer surplus funds from Classes 1, 2, 3 and 4 to Class 5 for contingency and emergency expenses. This being the only provision for transferring Class 2 funds, it presupposed an actual surplus, and that (under the facts) funds could not be transferred from Class 2 to Class 4.

It was further pointed out in such opinion that funds in Class 5, the contingency and emergency fund, should not be paid until the entire amount budgeted in Class 4, including the \$1,000.00 County Farm Bureau expense had been paid, since the statutory expenditures in Class 4, have priority over discretionary expenditures in Class 5.

The case of Gill v. Buchanan County, 142 S.W.2d 665, holding the full pay of a county judge was by law made a part of the county budget whether or not the court had actually included it in the county budget, was cited as authority for stating the circuit court's order that the county court pay the Ripley County Farm Bureau \$1,000.00, was by force of law included as an expenditure in Class 4 of the budget.

The first conclusion reached was that the county court had no power to transfer funds from Class 2 to Class 4 of the budget to pay the county's share of the expense of the Farm Bureau, when payment had been ordered by the Circuit Court.

The second conclusion reached was that if there were insufficient funds in Class 4 of the county budget to pay all claims on that class, the County Court should apportion and appropriate to each office the available funds in Class 4, in the proportion the approved estimate of each office bears to the total approved estimate in Class 4.

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Sections 10911, 10912, and 10914, RSMo 1939, referred to in the above-mentioned opinion, are now Sections 50.680, 50.690, and 50.710, RSMo 1959, respectively.

The Missouri Agricultural Extension Laws were enacted in 1955, and by them the county extension counsel became the successor of the Farm Bureau. For this reason it is believed such opinion is fully applicable to the present opinion request. That under principles declared in such opinion, the Wright County Court had the duty to appropriate in Class 4 of the county budget, the minimum sum of \$2,500.00 for county agricultural extension work, regardless of the fact there may not have been sufficient funds available to include this amount in Class 4.

In view of the fact said sum of \$2,500.00 for county agricultural extension service was a legitimate expenditure, it was included in Class 4 of the budget by operation of law, regardless of the fact the county court had not actually included it in Class 4.

After the County Court had included only \$1,500.00 for extension work in Class 4, and it appeared there would not be sufficient funds in that Class to pay all obligations in full on such Class 4, it then became the duty of the County Court to apportion and appropriate available funds in Class 4, to each office, as provided in the opinion mentioned above, and if there were still lacking funds sufficient in Class 4, to pay all obligations on that fund, including the \$2,500.00 for county extension work, the County Court might then transfer any surplus funds in Class 5 to Class 4 to meet the lack of funds sufficient to take care of all lawful obligations on Class 4.

It is believed the Mitchner opinion fully answers the present inquiry, and a copy of same is enclosed for your consideration.

The foregoing opinion which I hereby approve was prepared by my assistant, Paul N. Chitwood.

Very truly yours,

THOMAS F. EAGLETON
Attorney General

PNC:at
Enclosure