

September 19, 1963



Honorable Orville C. Winchell
Prosecuting Attorney
Laclede County
Lebanon, Missouri

Dear Mr. Winchell:

This is in answer to your letter of September 12, 1963, in which you request an opinion of this office, and which reads in part as follows:

"I am certain that there will be monies forwarded Laclede County on the gasoline tax and the question now arises as to whether or not the County Court can issue warrants which will be honored by the County Treasurer on a Class 3 budget appropriation."

We further understand the facts to show that Laclede County received more gas tax money, under Article IV, Section 30(a) of the Missouri Constitution as amended, than was anticipated in the county budget. Laclede County now has this money and the question concerns the legality of expenditures of this money.

Sections 50.680 and 50.710, RSMo 1959, define expenditures in Class 3 as those for the upkeep, repair or construction of roads and bridges on other than state highways and not in any special road district. The gasoline tax provided under Article IV, Section 30(a), of the Constitution as amended is known as the county aid road trust fund, and paragraph 1(1) thereof provides that:

"* * * The funds credited to each county shall be used by the county solely for the construction, reconstruction, maintenance and

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repairs of roads, bridges and highways,
and subject to such other provisions
and restrictions as provided by law.
* * *

From the language of the Constitution and statutes it is clear that the gasoline tax money referred to in your opinion request must be placed in Class 3 of the county budget and paid out as a Class 3 expenditure.

The only question is whether the unanticipated money which Laclede County now has may be expended even though it was not specifically included in the budget of Laclede County.

We call your attention to the case of State v. Cribb, 273 S.W. 2d 246, which followed the rule that a strict compliance with the county budget law was required but held, l.c. 250, that the object of the county budget law is to compel counties to operate on a cash basis and that the sum available to be spent in any one year is the revenue provided for that year plus any unencumbered balances from previous years. We believe this opinion shows a trend toward a more liberal construction of the county budget law.

On July 26, 1961, this office issued an opinion to Honorable James R. Reinhard, Prosecuting Attorney, Monroe County, Paris, Missouri, a copy of which opinion is attached. That opinion was based on the case of Gill v. Buchanan County, 346 Mo. 599, 142 S.W. 2d 665, which case was cited and approved in State v. Wade, Mo., 231 S.W. 2d 179, where the court said, l.c. 183:

"* * * while the Legislature did not fix the exact amount to be included in the budget, its direction in these statutes * * * is a mandate to the county court to include a reasonable amount for that purpose in each year's budget; * * *"

In State v. County Court of Barry County, 363 S.W. 2d 691, the court said, l.c. 695:

"* * * The order of the circuit judge made pursuant to Section 483.345 constituted a direction or mandate to the county court to include \$2,400 in

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the budget for the purpose stated in the order, and the county court had no more authority to ignore this valid directive by budgeting a lesser amount than it would have to budget an amount for salaries of county judges at an amount greater than that fixed by the Legislature. The provisions of Section 50.740 cited and relied on by appellants, and quoted above, do not prohibit the issuance of the warrants in this case. The warrants would not be issued contrary to any provision of the budget law when that law is read with and construed in its relation to Section 483.345."

In accordance with the foregoing, it is our opinion that the previous opinion of this office issued to Honorable James R. Reinhard on July 26, 1961, is controlling in this instance and that the county aid road trust fund money received by LaCledde County under Article IV, Section 30(a) of the Constitution, as amended, which the county court did not and could not anticipate receiving at the time the budget was prepared, must be considered to be in Class 3 as a matter of law, and such money should be expended as any other funds in Class 3.

Very truly yours,

THOMAS F. EAGLETON
Attorney General

Enclosure

WW:BJ