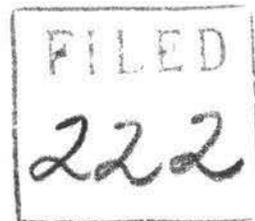


COUNTY BUDGET LAW: Purchase of real estate for addition to  
SECOND CLASS COUNTY: courthouse by second class county may be  
EMERGENCY FUND: made out of emergency fund created under  
CONTINGENT FUND: Section 50.540, RSMo. Purchase price may  
be paid over period of years if obligation  
at time it is incurred does not exceed  
annual revenue plus unencumbered balances  
from previous years.

OPINION NO. 222

September 16, 1964

Honorable Don E. Burrell  
Prosecuting Attorney  
Greene County  
Springfield, Missouri



Dear Mr. Burrell:

From the information you have given us the following appears to be the fact: The County Court of Greene County, a county of the second class, is planning on making an extension to the courthouse, and it is advantageous to acquire real estate contiguous to the present site by purchase. Under Section 49.305, RSMo 1959, a county is authorized to purchase real estate and pay for it out of the "contingent fund". Section 50.540, RSMo, applicable to second class counties, provides for an "emergency fund", and Greene County has provided for no contingent fund but does have an emergency fund under the latter statute. You ask (1) what is the meaning of the words, "Contingent Fund", as found in Section 49.305, and (2) is this wording, "Contingent Fund" synonymous with the "Emergency Fund" found in Section 50.540. We believe the real question to be decided is whether a second class county can spend money to expand the courthouse out of funds in the "emergency fund" provided pursuant to Section 50.540.

You also ask if the county could contract for the purchase of the land for a period of time paying Three to Four Thousand Dollars a year.

Section 49.305 is as follows:

"Sites for courthouse, jail, etc.,  
may acquire--funds from which payment

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authorized.--The county court of any county may acquire by purchase, for the county, improved or unimproved real estate for a site for a courthouse, jail or poorhouse or infirmary; or, when the county owns the site may acquire by purchase improved or unimproved real estate as an addition to or enlargement of the site. The county court may pay for the real estate acquired out of any money in the county treasury belonging to the contingent fund or out of any surplus in any other fund at the close of any fiscal year, after the payment of all warrants drawn during the year against the fund and of all other previously issued and outstanding warrants against the fund."

It will be noted that the county court may pay for the real estate acquired out of any money in the county treasury belonging to the contingent fund. Section 49.310 provides that a county may "erect and maintain" a courthouse and "may acquire a site, construct, reconstruct, remodel, repair, maintain and equip" said courthouse. The county court may issue bonds as provided by the general law covering the issuance of bonds for said purposes.

Section 50.540 provides that counties of the second class shall maintain an "amount equal to not less than three percent of the total estimated general fund revenues as an 'emergency fund'," and that any time during the year the county court in counties of class two may transfer funds from the emergency fund to any other appropriation upon the recommendation of the budget officer but that said transfer shall be made only for unforeseen emergencies and only upon unanimous vote of the county court.

Reading these two sections together, the question arises, is the "contingent fund", referred to in Section 49.305, and the "emergency fund", referred to in Section 50.540, one and the same fund. We believe that the answer is in the affirmative, and that the money in the "emergency fund" could be used for the purchase of the property in question for the following reasons:

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The designation "contingent fund" and "emergency fund" is frequently used interchangeably. For example, Section 50.680, although referring to counties of the third and fourth classes, provides that the county court shall set aside a fund "for the contingent and emergency expense of the county". These two designations of funds are synonymous and interchangeable.

An "emergency fund" has been defined as being the same as a "reserve fund". *State v. Vandiver* (Mo.), 111 S.W. 911, l.c. 919: "The term is 'reserve or emergency fund.' The words 'reserve' and 'emergency' are there both used as adjectives qualifying the same noun, and, as such, are convertible terms."

The Supreme Court of Missouri has held that the replacement of road machinery could be made from "contingent and emergency funds". *Everett v. County of Clinton*, 282 S.W. 2d 30. Here, the county court had set up a "contingent and emergency" fund. This fund was used for replacement of road graders. An injunction suit was brought wherein it was claimed that the use of this fund was illegal for the reason that the need for replacement could have been foreseen and was not a "contingency or emergency matter". The court held at l.c. 42:

"\* \* \* The possible or probable expense for rentals on, or for the purchase price of new motor graders to be leased or purchased, when the county court decided it was necessary to trade in the old ones and get new ones, was a contingent expense. \* \* \*"

This opinion holds that any expenditure, the need for which arises during the year, even though it could have been anticipated is a "contingent or emergency" expenditure and can be made from the county treasury if there is money available.

The courts of this state have used the words, contingent and emergency funds, interchangeably. (*Everett v. County of Clinton, supra*), and they have held that contingent and emergency expenses are to be included in any legitimate expense or lawful expenditure that the

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county is authorized to make if there is actually money in the county treasury available.

The case of State ex rel. v. Cribb (Mo. Sup.), 273 S.W. 2d 246, also holds that funds in other categories may be used for "any lawful purpose" provided "there is actually on hand in cash funds sufficient to pay all claims" in all other classes.

Under the authority of these definitions and the cited law, with reference to construction of courthouses, expenditures made from the contingent fund referred to in Section 49.305 may be made from the emergency fund in Section 50.540.

In answer to your last question concerning the period of time and the method of payment for the acquired property, you may purchase the desired property with payments extending over a period of years provided you do not exceed the restrictions imposed by Article VI, Section 26(a) of the Constitution of Missouri, 1945. This provision is as follows:

"No county \* \* \* shall become indebted in an amount exceeding in any year the income and revenue provided for such year plus any unencumbered balances from previous years, except as otherwise provided in this constitution."

State ex rel. v. Cribb, supra, states at l.c. 250:

"The object of the constitutional provision, Sec. 26(a) of Article VI, and the 'County Budget Laws,' supra, is to compel counties and municipalities to operate on a cash basis. In other words, the governing body may not obligate the county or municipality in a sum in excess of the revenue provided for any one year. The sum available to be spent in any one year is the revenue provided for that year 'plus any unencumbered balances from previous years.' \* \* \*"

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CONCLUSION

It is the opinion of this office that the purchase of real estate for an addition to the courthouse by a county of the second class may be made as provided for in Section 49.305, RSMo, out of the emergency fund created under Section 50.540, RSMo, provided there is unanimous approval by all of the county judges for such expenditure.

It is further the opinion of this office that the purchase price may be extended over a period of time, provided the obligation at the time it is incurred does not exceed the annual revenue (plus unencumbered balances from previous years), as provided in Section 26(a) of Article VI of the Constitution of Missouri, 1945.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, O. Hampton Stevens.

Yours very truly,

*Thomas F. Eagleton*  
THOMAS F. EAGLETON  
Attorney General