

TAXATION:
ROADS AND BRIDGES:
SECOND CLASS COUNTY:
COUNTY BUDGET LAW:

Where second class county has levied a tax under Section 137.555, RSMo 1959, for the purpose of creating a Special Road and Bridge Fund and budget adopted for fund under Sections 50.025 to 50.660, RSMo, and funds received from tax are in excess of amount budgeted, the budgeted amount for this fund cannot be changed or amended.

*Copies in
Vault*

OPINION NO. 302

November 27, 1964



Honorable Gerald Kiser
Prosecuting Attorney
Clay County
Liberty, Missouri 64068

Dear Mr. Kiser:

In your letter of August 26, supplemented by your letter of September 17, 1964, you state the following: Clay County is a county of the second class and the 1964 budget established for the road and bridge fund is less than the actual revenue received from the special tax levy. In other words, the income from the special tax levy for roads and bridges is in excess of the amount anticipated. You further state that you have exhausted the funds in the special tax fund, as it was budgeted, and now have need of funds for expenditures on roads and bridges.

Your question is, "Can you use the special tax funds received for road and bridge purposes in excess of the amount budgeted?"

Pursuant to Section 50.540 and Section 50.550, RSMo 1959, your budget for 1964 was adopted for the Special Road and Bridge Fund. Under Section 137.555, RSMo, the county court had levied a tax for road and bridge use. The statute provides, in part:

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"In addition to other levies authorized by law, the county court in counties not adopting an alternative form of government and the proper administrative body in counties adopting an alternative form of government, in their discretion may levy an additional tax, not exceeding thirty-five cents on each one hundred dollars assessed valuation, all of such tax to be collected and turned into the county treasury, where it shall be known and designated as 'The Special Road and Bridge Fund' to be used for road and bridge purposes and for no other purpose whatever; * * *"

The money on hand from the special tax can only be used for one purpose. Section 137.555, quoted above, specifically states that the Special Road and Bridge Fund is, "to be used for road and bridge purposes and for no other purpose whatever." (Emphasis supplied.)

The county budget law for class two counties is contained in Sections 50.525 to 50.660, RSMo, as amended. These sections provide that on or before December 1st the budget officer receives estimates of expenses and revenues from the various departments. The budget officer then prepares a budget document which he submits to the county court. Prior to the submission of this document the budget officer must hold public hearings and budget information must be open to public inspection at all times.

The budget plan must contain a complete financial plan for the ensuing year. Receipts from the special tax levy for roads and bridges must be kept in a special fund and all expenditures for roads and bridges must be charged to that fund (Section 50.550).

After the budget document is submitted to the county court, copies are made available for public distribution and the court must hold at least one public hearing on the budget after due notice to the public. The court may revise the document before final approval.

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There is no statutory authority for the revision of the budget once it has been adopted.

The legislature has provided a precise method for establishment of the budget. At least two public hearings are provided for and the entire budget document is made available for public perusal.

To permit the budget to be amended or changed in any manner after it has once been established would be to defeat the very purpose of the elaborate system provided by the legislature for public scrutiny. It was the obvious intent of the legislature to require the county court to make a full disclosure of the anticipated revenue and expenditures and to give the public ample opportunity to question or protest.

Our Supreme Court has held:

"This court has held that the purpose of the County Budget Law was 'to compel * * * county courts to comply with the constitutional provision, section 12, art. 10' by providing 'ways and means for a county to record the obligations incurred and thereby enable it to keep the expenditures within the income.' Traub v. Buchanan County, 341 Mo. 727, 108 S.W. 2d 340, 342." [Gill v. Buchanan County, 142 S.W. 2d 665, 668.]

The very fact that the legislature did not provide for amending or altering the budget, once it was established, demonstrates their intention that it should not be amended. The courts of this state have held that where a statute prescribes a method of procedure it cannot be done otherwise. Keane v. Strodman, 18 S.W. 2d 896, 898.

"* * * The familiar maxim of 'expressio unius est exclusio alterius' may also be invoked, for the maxim is never more applicable than in the construction of statutes. Whitehead v. Cape Henry

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Syndicate, 105 Va. 463, 54 S.W. 306;
Hackett v. Amsden, 56 Vt. 201, 206;
Matter of Attorney General, 2 N.M. 49.

"[5] Certainly where, as at bar, the statute (section 8702) limits the doing of a particular thing to a prescribed manner, it necessarily includes in the power granted the negative that it cannot be otherwise done. This is the general rule as to the application of the maxim. Even more relevant under the facts in this case is the interpretation given to it by the Kansas City Court of Appeals in Dougherty v. Excelsior Springs, 110 Mo. App. 623, 626, 85 S.W. 112, 113, to this effect: 'That when special powers are conferred, or where a special method is prescribed for the exercise and execution of a power, that exercise is 'within the provision of the maxim * * * and * * * forbids and renders nugatory the doing of the thing specified except in the particular way pointed out.'"

As we have stated, there is nothing in the county budget law indicating any legislative intent to permit the expenditure of any fund for roads and bridges in excess of the amount budgeted.

If the income received from the special tax levied for roads and bridges is greater than the amount anticipated, it is required by law to be placed in the Special Road and Bridge Fund, and it must be used only for the purpose for which it was designated.

CONCLUSION

It is the opinion of this office that where a county of the second class has levied a tax under Section 137.555, RSMo 1959, for the purpose of creating a Special Road and

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Bridge Fund and a budget was adopted for this fund under Sections 50.025 to 50.660, RSMo, and funds received from this tax are in excess of the amount budgeted, the budgeted amount for this fund cannot be changed or amended. The amount expended for road and bridge purposes must be limited to the amount budgeted for this purpose.

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

Yours very truly,


THOMAS F. EAGLETON
Attorney General