

COUNTY TREASURER: Must pay warrants in regular order of presentment even though judgment has been obtained on them.

May 10, 1943

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Mr. H. A. Ballard
County Treasurer
Doniphan, Missouri

Dear Sir:

We are in receipt of your request for an opinion, under date of May 5, 1943, which reads as follows:

"The treasury of Ripley County, Missouri has some funds in several back years. There are outstanding warrants in those years, and also some judgments against the County of Ripley based on warrants issued on the revenue for those years.

"I desire an opinion concerning whether in setting the money aside, I should ignore the warrants that have been reduced to judgment, or whether I should set aside the money and pay them in their regular order, just as if they had not been sued upon."

Section 13833 R. S. Missouri, 1939, reads as follows:

"No county treasurer in this state shall pay any warrant drawn on him unless such warrant be presented for payment by the person in whose favor it is drawn, or by his assignee, executor or administrator; and when presented for payment, if there be no money in the treasury for that purpose, the treasurer shall so certify on the back of the warrant, and shall date and subscribe the same."

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Under the above section if a warrant is presented for payment on a fund in which there is no money, it is the duty of the county treasurer to certify that fact on the back of the warrant and the date of the presentment.

Section 13858 R. S. Missouri, 1939, partially reads as follows:

" * * * * but no county treasurer shall draw any check upon the funds in any depository unless there is sufficient money belonging to said fund upon which said warrant is drawn to pay the same, and no money belonging to said county shall be paid by any depository except upon checks of the county treasurer. **"

Section 13801 R. S. Missouri, 1939, partially reads as follows:

"He shall procure and keep a well-bound book, in which he shall make an entry of all warrants presented to him for payment, which shall have been legally drawn for money by the county court of the county of which he is the treasurer stating correctly the date, amount, number, in whose favor drawn, by whom presented, and the date the same as presented; and all warrants so presented shall be paid out of the funds mentioned in such warrants, and in the order in which they shall be presented for payment: * * * * *"

Under the above partial section all warrants that have been presented and certified by the treasurer as to no funds, shall be paid in the order in which they are presented. Since we are presuming that the warrants upon which judgments have been obtained have been presented for payment, and are properly certified as to no funds, they should follow the regular order of payment, as set out in the above section. The pur-

pose of the certification of warrants, showing there are no funds in the treasury to meet them, is to entitle the owner of the warrant to an early payment and the allowance of interest on the warrants from the date of the presentment. It has been held that a county warrant only draws interest from the time of its presentation to the county treasurer, where there is no money in the treasury to pay it. (Isenhour v. Barton County, 190 Mo. 163.)

A county warrant upon which a judgment has been obtained, is merely the evidence of an indebtedness, and the judgment is not granted any priority over other warrants which were certified previous to the certification of the warrant upon which the judgment is based. That a county warrant upon which a judgment has been obtained is merely evidence of the indebtedness, was held in the case of Sturdivant Bank v. Stoddard County, 332 Mo. 568, 1. c. 572, 58 S. W. (2d) 702, where the court said:

"In Isenhour v. Barton County, 190 Mo. 163, 170, 88 S. W. 759, we held that county warrants are merely evidences of indebtedness, and that the General Assembly had the power to provide, as it did by what is now Section 12171, Revised Statutes 1929, that when any such warrant is presented for payment, if there is no money in the treasury for such purpose, the treasurer shall so certify on the back of the warrant, and shall date and subscribe the same. Section 12139, Revised Statutes 1929, further provides that 'all warrants so presented shall be paid out of the funds mentioned in such warrants, and in the order in which they shall be presented for payment.' (5) Also, we have ruled in State ex rel. v. Hortsman, 149 Mo. 290, 295, 50 S. W. 811 (opinion disapproved in some respects in State ex rel. v. Johnson, 162 Mo. 621, 633, 63 S. W. 390, but reaffirmed in this) that a judgment founded on a county warrant gives no preference over the warrant as to payment. * * * * *

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Section 12139 R. S. Missouri, 1929, is now Section 13801 R. S. Missouri, 1939.

Also, in the case of Douglas County v. Bank of Ava, 333 Mo. 1195, 1. c. 1200, 65 S. W. (2d) 104, the court said:

" * * * It is evident here that if the defendant bank had sued plaintiff on these county warrants drawn on and payable out of the county revenue for 1930, it would not be a complete defense to show that the county had no such funds out of which to pay same, but the status of any judgment obtained against the county on these warrants drawn on the county revenue fund would be subject to the same limitations and restrictions as to payment as the warrants themselves and could not be enforced against the deposit now in question belonging to other funds. * * * *"
(Underscoring ours.)

Under the above holding the county warrants upon which judgments are obtained would be subject to the same limitations and restrictions as to payment as other warrants.

CONCLUSION

It is, therefore, the opinion of this department that the treasurer of Ripley County should set aside the funds which he has received from back years for all warrants properly certified and such warrants should be paid in the order of their date of presentment and certification.

It is further the opinion of this department that the county treasurer should not ignore the warrants that have been reduced to judgment, but should set aside the money he has received and pay them in their regular order, just as if they had not been sued upon.

APPROVED BY:

Respectfully submitted

ROY MCKITTRICK
Attorney General

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