

COUNTY BUDGET LAW: Appropriation for county hospitals comes out of class five of Budget Law.

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G. Smith

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Mr. Davis Benning
Prosecuting Attorney
Pike County
Bowling Green, Missouri

Dear Sir:

This acknowledges your request, which is as follows:

"The Pike County Hospital of Pike County, Missouri is operated and maintained under the Provisions of Article 4 Chapter 126, Revised Statutes of Missouri, 1939, which is entitled 'Establishing and maintaining County Hospitals.'

"The Board of Trustees of the Pike County Hospital have advised the County Court of Pike County that the funds and income of said hospital are insufficient to maintain and operate it for the balance of this year and have requested the County Court to make an appropriation out of its general funds for the support, maintenance and operation of said hospital and are making this request under Section 15201, Revised Statutes of Missouri, 1939.

"I would appreciate very much if you would give me your opinion as to which classification under the County Budget Law, the County Court may make this appropriation."

Replying to same, Section 15201, R.S. Mo. 1939, provides as follows:

"In counties exercising the rights conferred by this article, the county court may appropriate each year, in addition to tax for hospital fund hereinbefore provided for, not exceeding five (5) per cent of its general fund for the improvement and maintenance of any public hospital so established."

Section 10911, Session Acts of 1941, page 650, sets out the classification of proposed expenditures that the County Court shall make and the order in which they shall be made.

Section 10914, Laws of Missouri 1941, page 652, requires the County Court to show the estimated expenditures for the year by classes, and provides six classes.

Your question is which one of these six classifications embraces the appropriation by your County Court of funds to your county hospital under authority of Section 15201, above set forth.

By a mere reading of the first four classes it is easily determinable that such an appropriation does not come under any of them, because the appropriation is not for the care of paupers who are insane in state hospitals, nor is it for the expense of conducting circuit court or holding elections, nor is it for the repair or construction of roads and bridges, nor is it for the pay or salaries of officers and office expense.

Class 5 thereof authorizes the County Court to "transfer any surplus funds from class 1, 2, 3, and 4 to class 5 to be used as contingent and emergency expenses."

The word "contingent" is defined by Webster's New International Dictionary, Unabridged, 1940, among other definitions, to mean "liable, but not certain, to occur; possible." As used in law, it gives this definition thereof: "Dependent for effect on something that may or may not occur."

The writer has read all of the cases that he has found in the Missouri Revised Statutes Annotated bearing on the construction of the County Budget Law, among them being the following: Layne Western Company v. Buchanan County, 85 Fed. (2d)

343; Gill v. Buchanan County, 142 S.W. (2d) 665, 546 Mo. 599; Graves v. Purcell, 85 S.W. (2d) 543, 337 Mo. 574; Bash v. Truman, 75 S.W. (2d) 840, 335 Mo. 1077; Rinehart v. Howell, 153 S.W. (2d) 381, 348 Mo. 421; State ex inf. Walsh v. Thatcher, 102 S.W. (2d) 937, 340 Mo. 865; Traub v. Buchanan County, 108 S.W. (2d) 340, 341 Mo. 727; Mo.-Kan. Chemical Co. v. New Madrid County, 139 S.W. (2d) 457, 345 Mo. 1167; Carter Waters Corp. v. Buchanan County, 129 S.W. (2d) 914.

From such investigation as we have made, we have not been able to find where the courts in Missouri have thrown much light on the classification which should be given to the various items mentioned in the County Budget Act. However, in Words and Phrases, Volume 8, Permanent Edition, page 124, a number of cases are cited under the term "Contingent Expense," among them being People v. Village of Yonkers, N.Y., 39 Barb. 266, 272, holding a contingent expense must be deemed to be an expense depending on some future uncertain event.

The Ohio case of State v. Kurtz, 144 N.E. 120, 124, 110 Ohio St. 332, holds, according to the above authority, that "expenses certified to the county auditor by the county board of education are to be considered as 'contingent expenses' if made for a legitimate school purpose."

Said authority also cites Brannin v. Sweet Grass County, 295 P. 970, 972, 88 Mont. 412, as holding, "Contingent expenses necessarily incurred for use and benefit of county which are made proper county charges by virtue of Rev. Codes 1921, Sec. 4952, Subd. 8, are defined to mean happening of unforeseen causes or subject to unforeseen conditions, or such as are possible or liable but not certain to occur."

It would seem that your county hospital has, in the past, been able to operate without the appropriation being made by the County Court, to which your request here refers, but that at this time your county hospital is not able to operate properly without the appropriation mentioned in Section 15201, supra. So far as we are advised, there is no certainty that your county hospital will be able to function properly hereafter without such an appropriation by the County Court, or will not be able to satisfactorily operate without such an appropriation. In other words, such an appropriation may or may not be necessary in future years, or, as is said in Webster's Dictionary, above, that need is

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"liable, but not certain, to occur," which would seem to place your appropriation properly within class 5 of the County Budget Law, that is, that this appropriation is to be used as "contingent" expenses and for the payment thereof.

Conclusion,

It is our opinion that where the County Court makes an appropriation of not exceeding five per cent of its general funds for the improvement and maintenance of a public county hospital established under Section 15201, R.S. Mo. 1939, that the classification under the County Budget Law, to which said appropriation should go, is class 5 thereof.

Yours very truly,

DRAKE WATSON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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