

COUNTY BUDGET ACT: (1) Classes should be paid in order of their priority; (2) Section 12140, R. S. 1929, should be considered in payment of warrants; (3) Constitutionality of the Budget Law.

December 20, 1938

Mr. Frankie Booker
Treasurer
Ripley County
Doniphan, Missouri



Dear Sir:

This Department is in receipt of your letter of December 15th. As your letter involves several questions, we shall attempt to segregate the questions and answer each.

The first question is as follows:

"Whether Class 2 Warrants drawn on the County Revenue shall have priority of payment over all except Class 1 Warrants as provided by the Budget Law of 1933, pages 340-341, Section 1, and whether Class 3 shall constitute the third obligation of the County, and so, as provided by said law.

It appears by our files that we have rendered an opinion which deals with the principle involved in your question, said opinion being to Miss Carrie Williams, Treasurer of Barry County, Cassville, Missouri, on June 21, 1934. Copy of the opinion is herewith enclosed, which is to the effect that each class receives priority of payment over all succeeding classes. In other words, we think it was the intention of the Legislature that all warrants in Class 1 should be paid if such warrants are protested before the warrants of Class 2, and each subsequent class should be paid.

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Your second question is as follows:

"The question has been presented to us that the Legislature failed to repeal Section 12139 and 12140 R. S. Mo. 1929 in the enactment of the Budget Law of 1933 although it attempted to do so by the provisions of Sections 1 and 22 thereof, for the reason that Sections 12139 and 12140 were not expressly repealed, and therefore, that County Warrants shall be paid in the order in which they shall be presented for payment and not according to the Class in which they are drawn. And further the question has been raised the Budget Law of 1933 is unconstitutional."

Relative to the above question, this Department rendered an opinion to Honorable Charles Farrar, Prosecuting Attorney, Buffalo, Missouri, on September 27, 1934.

We note that this opinion discusses Section 12140, R. S. Mo. 1929. We are also enclosing copy of opinion written to Honorable H. B. Schroeder, Treasurer of Crawford County, Missouri, on October 26, 1933, in which the effect of Section 12140 is discussed. However, the section should further be considered, in the payment of warrants, to the effect that if protested warrants are in Class 1 the warrants should be paid according to the time which said warrants are registered and should take precedence over the warrants in other classes. In other words, the registration of warrants should be followed according to time in the individual classes and the warrants of each class should take precedence over each subsequent class.

Relating to the constitutionality of the Budget Law, it is not the policy of this Department to pass upon the constitutionality of acts of the Legislature and declare the same unconstitutional. However, the constitutionality of the Budget Act, relating to counties of more than 50,000 inhabitants,

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was raised in the decision of *Graves v. Purcell*, 337 Mo. 574, and the Act was held to be constitutional.

We are also enclosing copy of opinions which further bear on the questions presented by your letter. In the event there is any further information we can give you please feel free to write us.

Very truly yours

OLLIVER W. NOLEN
Assistant Attorney-General

APPROVED:

J. E. TAYLOR
(Acting) Attorney-General

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Encs.