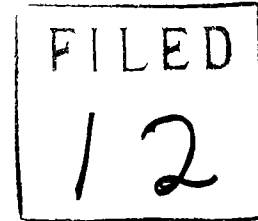


COUNTY BUDGET LAW: County Clerk cannot countermand orders of County Court in budget matters.

June 6, 1950



Honorable William F. Brown  
Prosecuting Attorney  
Pettis County  
Sedalia, Missouri

Dear Sir:

We have received your request for an opinion of this department, which request is as follows:

"The question has arisen in this County as to the nature and extent of the County Clerk's authority as Budget Officer, in Counties of the Third Class.

"Our County Clerk assumes the position that he is the sole arbiter in matters affecting the budget, and has either directly or in effect, countermanded the orders of the County Court in respect to the payment of items provided in the budget.

"If I understand the situation correctly, a County Clerk in Counties of the Third Class is the Budget Officer for the purpose of preparing the budget under the direction of the County Court and in conformance with their orders in the matter.

"I will appreciate an opinion from your office clarifying this matter especially with reference to whether or not the County Clerk has the authority to countermand the orders of the County Court in budget matters."

Section 10910, Laws of Missouri, 1945, page 610, provides in part as follows:

" \* \* \* The clerk of the county court of the several counties of this state shall

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be the budget officer of such county and as such shall prepare all data, estimates and other information needed or required by the county court for the purpose of carrying out the provisions of this article but no failure on the part of the clerk of the county court shall in any way excuse the county court from the performance of any duty herein required to be performed by said court. The county court shall classify proposed expenditures according to the classification herein provided and priority of payment shall be adequately provided according to the said classification and such priority shall be sacredly preserved."

Other provisions of the county budget law deal with the duties of the county clerk in the preparation of the county budget. Section 10912, R. S. Missouri, 1939, requires the county officials to submit their annual estimates to the county clerk. Section 10913, R. S. Missouri, 1939, requires the county clerk to prepare and spread on the docket of the county court certain information required in order to prepare the county budget. Section 10917, R. S. Missouri, 1939, requires the county clerk to enter on the record of the court the budget, after it has been revised and approved by the county court. The county clerk is also required to file a certified copy of the budget with the county treasurer and to forward a certified copy to the State Auditor.

These provisions, which are the only ones dealing with the duties and authority of the county clerk in matters relating to the county budget, impose upon the county clerk only certain ministerial duties in connection therewith.

Section 7 of Article VI of the Constitution of Missouri, 1945, provides that the county court "shall manage all county business as prescribed by law." The county budget law has carried out this plan of operation of the county business. Section 10911, R. S. Missouri, 1939, requires the county court to classify expenditures in the six specified classes. Section 10914 requires the county court to show the estimated expenditures for the year by classes. Section 10917 provides for the final approval of the budget by the county court as follows:

"It is hereby made the first duty of the county court at its regular February term

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to go over the estimates and revise and amend the same in such way as to promote efficiency and economy in county government. The court may alter or change any estimate as public interest may require and to balance the budget, first giving the person preparing supporting data an opportunity to be heard but the county court shall have no power to reduce the amounts required to be set aside for classes 1 and 3 below that provided for herein. \* \* \*

Thus, it is seen that the matter of final approval of the county budget is left to the county court.

Cases dealing with the county budget law have not expressly passed on the question presented by you, but all have recognized that the county court is the body charged with the responsibility of administering the county affairs in accordance with the county budget act. In the case of Bradford v. Phelps County, 210 S. W. (2d) 997, at l. c. 999, the court stated:

" \* \* \* County courts as the managerial agents of the county have the duty to so manage the county's fiscal affairs as to comply with Section 26, Article VI, Constitution of Missouri, 1945, providing (inter alia) limitations on indebtedness of local governments. \* \* \* It is evident from the language of the County Budget Law that county courts in complying with the Law have duties of a discretionary nature in examining, revising and changing the estimates of the county's expenditures to the end of promoting the standard of 'efficiency and economy in county government,' Section 10917, supra. In giving such discretionary managerial powers and duties to the county courts, the Legislature has not provided an appeal whereby a circuit court may review the county court's acts in the exercise of its discretion and whereby the circuit court can substitute its own independent judgment."

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In that case the court further stated at l. c. 1001:

"We have noticed the Legislature has seen fit to delegate to the county court discretionary powers and duties under Section 10917 of the County Budget Law--the county court can be said to be 'the agency most familiar with the fiscal affairs and financial condition of the county' (State ex rel. Dietrich v. Daues, supra; State ex rel. Dwyer v. Nolte, supra), as well as the agency most likely to soundly budget estimated receipts and expenditures to the end of efficiency and economy in county government. \* \* \*"

We find no statutory provision authorizing the county clerk to interfere in any way with the county court's exercise of its powers under the county budget law. The clerk is a ministerial officer with certain ministerial functions to perform in connection with the budget, and although he is designated as the budget officer, he is not authorized in any regard to countermand the action of the county court in budget matters.

#### CONCLUSION

Therefore, this department is of the opinion that the county court is the body charged with the management of the county's affairs under the county budget law, and that the county clerk as budget officer performs only ministerial duties in assembling the estimates required to be submitted to him and in entering the budget of record after its approval. He has no authority to countermand the orders of the county court in budget matters.

Respectfully submitted,

ROBERT R. WELBORN  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General