

COUNTY BUDGET: Failure to include county health officer's salary in budget does not relieve the county of the obligation.

April 23, 1943

Dr. S. B. Buck
County Health Commissioner
McDonald County
Anderson, Missouri

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Dear Sir:

We are in receipt of your request for an opinion, under date of April 20, 1943, which reads as follows:

"As you know last fall in the election a number of new officers were elected to offices, this being the case with our county Court and County Clerk in making the Budget they failed to budget the County Health Officer. Is there any way that they can amend this so that I can get my salary?

"They want to pay me but say they cannot do it under the circumstances. I told them that I would write you as County Health Officer and get an opinion."

Section 9745 R..S. Missouri, 1939, partially reads as follows:

" * * * If a county court of any county decides to appoint a deputy health commissioner, as empowered in this law, it shall agree with said commissioner as to the compensation and expenses to be paid for such services which amount shall be paid out of the county treasury of the county."

In giving our opinion on this request we are assuming that the county court duly appointed you as deputy health commissioner and agreed with you as to the compensation and expenses to be paid for such services. If an agreement was made it is a statutory salary, as provided by the above section.

The Supreme Court of this State has held that where a salary is fixed by the legislature, such as by an agreement, the county court's failure to include the salary of the county officer in the budget does not relieve the county of the obligation to pay the same. It was so held in the case of Gill v. Buchanan County, 142 S. W. (2d) 665, 1. c. 668, where the court said:

" * * * 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.

"To properly accomplish that purpose, mandatory obligations imposed by the Legislature and other essential charges should be first budgeted, and then any balance may be appropriated for other purposes as to which there is discretionary power. Failure to budget funds for the full amount of salaries due officers of the county, under the applicable law, which the county court must obey, cannot bar the right to be paid the balance. Instead, it must be the discretionary obligations incurred for other purposes which are invalid, rather than the mandatory obligation im-

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posed by the same authority which imposed the budget requirements. We, therefore, hold that a county court's failure to budget the proper amounts necessary to pay in full all county officers' salaries fixed by the Legislature, does not affect the county's obligation to pay them."

CONCLUSION

It is, therefore, the opinion of this department, that if the county court duly appointed you as county health officer, and agreed with you as to your salary, they should pay you that salary even though the same was not included in the county budget.

Respectfully submitted

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Assistant Attorney General

APPROVED BY:

ROY MCKITTRICK
Attorney General of Missouri

WJB:RW