

COUNTIES: May purchase road machinery
out of any surplus in Class 5.

v/v/2

February 9, 1942

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Hon. R. M. Fendorf
Prosecuting Attorney
Miller County
Tuscumbia, Missouri

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Dear Sir:

We are in receipt of your request for an opinion, dated February 7, 1942, which reads as follows:

"On September 18, 1941, the county court of this county entered into a 'lease agreement' with a road machinery company, under which the county as lessee purports to rent a caterpillar tractor and road grader from the company as lessor. The termination date of the lease period is given as March 1, 1942, at which time the lessee has the option of purchasing the machinery at an agreed value of \$3523.25. Rent in the amount of \$3430.00 was paid in advance for the original lease period (from 9-18-1941 to 3-1-1942). Later, a similar contract was entered into for the lease of another road machine.

"The initial payment or 'rent' was made from Class 5 of the county revenue. At the date of the agreements, there were several WPA road projects under construction in the county, and these machines were acquired for use on those projects. The county court paid the rent out of Class 5 on the theory that such payments were in furtherance of relief work in the county; in other words, that funds could be drawn out of Class 5 for direct relief purposes and that the furtherance of the WPA projects, either with cash, material or equipment, indirectly amounted to the same thing.

"All WPA road projects have now been closed in the county, although at least one is incomplete. The county court now contemplates the purchase of this machinery under the agreement with funds from Class 5. I should like to have the opinion of your department as to the propriety of such a disbursement.

"The budget for 1941 did not specifically list these expenditures, but \$22,469.29 were set up for 'relief and miscellaneous.' Disbursements from Class 5 did not exceed the budget, and the budget for 1941 would not be exceeded even if the payments now due be charged against the 1941 estimate. The 1942 budget does not list these machinery payments specifically under any class. There is set up in Class 5 the sum of \$10,000.00 for 'miscellaneous and emergency.' If the machinery payments are made from Class 5, they will have to come out of the last mentioned appropriation."

Class 5 of the budget law, as set out in Section 10914, Laws of Missouri, 1941, page 652, reads as follows:

"Class 5. Contingent and emergency expense.-
The county court may transfer any surplus funds from class 1, 2, 3, and 4 to class 5 to be used as contingent and emergency expenses. Purposes, for which the court proposes the funds in this class shall be used, shall be shown."

Class 5 of the county budget law, as set out in Section 10911, Laws of Missouri, 1941, page 651, reads as follows:

"Class 5. The county court shall next set aside a fund for the contingent and emergency expense of the county, the court may transfer any surplus funds from classes 1, 2,3,4 to class 5 to be used as contingent and emergency expense. From this class the county court may pay contingent and incidental expenses and expense of paupers not otherwise classified. No payment shall be allowed from the funds in this class for any personal service, (whether salary, fees, wages or any other emoluments of any kind whatever) estimated for in proceeding classes."

Under Section 10911, supra, class 5 refers to the classification of proposed expenditures, while class 5 under Section 10914 refers to the classification of estimated expenditures. Under both Sections 10,911 and 10914 the surplus from classes 1,2,3, and 4 may be transferred to class 5 for all lawful purposes, excepting no payment shall be allowed from funds in class 5 for personal service, such as salary, fees, wages etc.

We are assuming from your request that Miller County is financially able to pay all of the estimated expenditures and warrants outstanding in all of classes 1, 2, 3, and 4, as estimated for the year 1941.

We are also assuming that the county will have sufficient funds to pay all of classes 1, 2, 3, and 4 of 1942. The county court has authority to buy road machinery providing the purchase can be made on a cash basis from the money received during the year in which the purchase was made. The county court was authorized under Section 8595 R. S. Missouri, 1939, which partially reads as follows:

"Whenever any public money, whether arising from taxation or from bonds

heretofore or hereafter issued, is to be expended in the construction, reconstruction or other improvement of any road, or bridge or culvert, the county court, township board or road district commissioners, as the case may be, shall have full power and authority to construct, reconstruct or otherwise improve any road, and to construct any bridge or culvert in such county or other political subdivision of the state, and to that end may contract for such work, or may purchase machinery, employ operators and purchase needed materials and employ necessary help and do such work by day labor. * * * "

The county budget act did not take away the duties of the county court to transact all county business, but merely sets out a form of procedure which would prohibit the county from becoming indebted to more than the estimated receipts of taxes coming in.

It was so held in the case of Traub v. Buchanan County, 108 S. W. (2d) 340, l. c. 342, where the court said:

"* * * The effect and intent of the budget law, as we understand it, is to compel, or at least to make it more expedient for the county courts to comply with the constitutional provision, section 12, art. 10, Mo. Constitution, which provides that a county shall not contract obligations in any one year in excess of the revenue provided for that year. The budget law leaves the transaction of business to the county courts. But the law provides (section 19, p. 350, 1933 Laws (Mo. St. Ann. sec. 12126s, p. 6434)):

"No contract or order imposing any financial obligation on the county shall be binding on the county unless it be in writing and unless there is a balance otherwise unencumbered to the credit of the appropriation to which the same is to be charged and a cash balance otherwise unencumbered in the treasury to the credit of the fund from which payment is to be made, each sufficient to meet the obligation thereby incurred and unless such contract or order bear the certification of the accounting officer so stating."

"No power possessed by the county court was thereby curtailed. The budget officer simply determines whether sufficient money is provided with which to pay the obligation intended to be incurred by any contract or order presented to him for indorsement. This is a mere matter of bookkeeping. If the cash is on hand or has been provided for, it is the duty of the auditor or budget officer to make such indorsement upon the order or contract. If not, he merely refuses to make the indorsement. Prior to the enactment of the budget law, a county court had no right to incur obligations in any one year in excess of the revenue provided for that year. By the enactment of the budget law, the Legislature has merely provided ways and means for a county to record the obligations incurred and thereby enable it to keep the expenditures within the income. The power of the county court not having been curtailed by the enactment of the budget law, the point made by respondent is without merit and is ruled against him."

The above case has been approved in the case of Gill v. Buchanan County, 142 S. W. (2) 665.

Under the above opinion the county court is empowered to buy road machinery, providing the surplus from classes one, two, three, four and five of the budget act would permit such a purchase. By the general law the county court has the authority to transfer unneeded funds from one fund to another, which is - unneeded money in classes one, two, three and four can be transferred to class five. The county court is authorized to make such a transfer by reason of class five of Section 10914, Laws of Missouri, 1941, page 652 and also by Section 13829, R. S. Missouri, 1939, which reads as follows:

"Whenever there is a balance in any county treasury in this state to the credit of any special fund, which is no longer needed for the purpose for which it was raised, the county court may, by order of record, direct that said balance be transferred to the credit of the general revenue fund of the county, or to such other fund as may, in their judgment, be in need of such balance."

CONCLUSION

Since under the law the county budget is now being prepared by the separate county courts, and in view of the fact that there is sufficient money to pay for the road machinery out of the 1941 budget, we are of the opinion that this purchase as set out in your request may be made out of the surplus funds which are now or may be in class five of the county budget of 1941.

In view of the fact that you say there would be sufficient funds to make the purchase out of the 1942 budget, we are of the opinion that the road machinery may be purchased out of class five, of the 1942 budget, provided that there are sufficient funds to pay all outstanding warrants or anticipated indebtedness

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in all of classes one, two, three and four of the 1942 budget. To be sure that the purchase of machinery could be lawfully made at this time, we would suggest that since the 1941 budget has a surplus that the machinery be purchased from it.

Respectfully submitted

W. J. BURKE
Assistant Attorney General

APPROVED:

ROY MCKITTRICK
Attorney General

WJB:RW