

COUNTIES:
FEDERAL SURPLUS COMMODITIES
CORPORATION:
APPROPRIATION OF PUBLIC
MONEYS FOR:

County Courts may appropriate public funds to Surplus Commodities Corporation to carry out the purpose for which that corporation was formed, provided, the funds are available and not in conflict with the provision of the County Budget Law.

September 26, 1940

Hon. Frank W. Hayes
Prosecuting Attorney
Pettis County
Sedalia, Missouri

9-28



Dear Sir:

This is in reply to yours of recent date wherein you request an opinion from this department on the question of whether or not county courts may appropriate public funds to the Federal Surplus Commodities Corporation.

In connection with this request you submitted your proposition in three questions, namely:

"(1) Would it be legal for Pettis County to borrow money in anticipation of the collection of taxes for the current fiscal year for the purpose of financing this revolving fund?

"(2) Would it be legal for Pettis County to use balances in road funds or bond funds to finance a revolving fund.

"(3) Even if the money were available, would it be legal for Pettis County to make an unsecured loan to an agency for the purpose of financing this revolving fund."

In your letter you indicate that you are under the impression that this department has rendered an opinion to Greene County, Missouri, on this question.

Sept. 25, 1940

You are in error as to that. We have rendered an opinion to Mr. E. A. Barbour, Jr, of Springfield, Missouri, in reference to the city of Springfield, on this question, and we are enclosing a copy of this opinion for your information. This opinion was dated August 15, 1940.

You will note in this opinion that this department has ruled that the city of Springfield, by virtue of the provisions of the Constitution and the statutes applicable to such cities, is authorized to make such an appropriation. In support of that opinion we have cited the Jasper County Farm Bureau case, 286 S. W. 381, and the City of St. Louis case, 58 S. W. (2d) 979.

In the City of St. Louis case you will note that the court held that an ordinance authorizing the issuance of bonds to provide relief for the people of the city, who were unable to take care of themselves, and to relieve them of their condition, was an appropriation for a public purpose and within the provisions of the Constitution. In the St. Louis case the court referred to different sections of the statutes which authorized counties to expend money for the poor and needy. On page 9 of the copy of the opinion which we are enclosing you will find these different sections set out and we do not deem it necessary to restate them here.

The purposes of the Surplus Commodities Corporation are similar to those of any other agency for relief. At page 11 of the copy of the opinion which we enclose we also cite the case of State ex rel. Seibert, 123 Mo. 424, as authority for the proposition that the Surplus Commodities Corporation may act as agent for the county in disbursing these moneys.

Therefore, following the authorities set out in the Barbour opinion, supra, it is the opinion of this department that the County Court of Pettis County would be authorized to furnish public funds to the Surplus Commodities Corporation to carry out the purposes for which that corporation was formed, which is in aid and for the relief of the poor and needy.

Answering your questions in the order in which they are submitted: ⁿ(1) Would it be legal for Pettis County to borrow money in anticipation of the collection of taxes

for the current fiscal year for the purpose of financing this revolving fund?", will say that the statutes are a warrant of authority to the County Court. *Wolcott v. Lawrence County*, 26 Mo. 272. Therefore, on the question of whether or not that County could borrow money in anticipation of the collection of taxes for the current fiscal year for the aforesaid purpose, we must look to the statutes for that authority.

Sections 1 to 8 of the County Budget Act, which was passed in 1933 (Laws of Missouri 1933, page 340), apply to counties of the class to which Pettis County belongs (that is, 50,000 inhabitants or less). From the reading of the aforesaid sections of said Act it is very clear that the lawmakers intended to place counties on a strictly cash basis.

Section 17 of the Act, Laws of Missouri 1933, page 349 (amended Laws of Missouri 1939, page 660), authorizes county courts to borrow money in anticipation of the collection of taxes for the current fiscal year. However, that section does not apply to counties in the class to which Pettis County belongs, and, therefore, since the counties of 50,000 inhabitants or less inhabitants have been left out of that class, then there is no doubt but that the lawmakers intended to prohibit such counties from borrowing money in anticipation of the collection of taxes for the fiscal year. In other words, the counties of 50,000 or less are not authorized to borrow money in anticipation of collection of taxes for the current fiscal year for the purpose of financing the revolving fund or the fund to be used for the purpose of financing the Surplus Commodities Corporation.

Answering your second question: "(2) Would it be legal for Pettis County to use balances in road funds or bond funds to finance a revolving fund?", we think that the road fund whether raised by virtue of the provisions of Section 7890 or 7891, or bond funds, would come within the classification of special funds raised for those purposes. In connection with the question of the authority of the County Court to transfer funds, we find that the only time the County Court is authorized to do this is provided for by Section 12167, R. S. Mo. 1929. This section provides 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."

By virtue of the provisions of this section, and since the purposes for which your road funds were raised are still in existence, and this money will be needed for that purpose, then it is the opinion of this department that you would not be authorized to transfer your road funds for the purpose of financing this revolving fund. If you have bond funds on hand and these bonds have been paid off in full, then the County Court, under the provisions of the foregoing section, would be authorized to transfer those funds to your general revenue fund. However, under the Budget Act, and since the expenditures for this revolving fund was apparently not anticipated in your budget for 1940, then these funds, even if transferred, could not be put into the revolving fund until the expenditures in the first four classes of Section 5 of the Budget Act had been met or the County Court was reasonably certain that sufficient funds were on hand to meet such expenditures.

Answering your third question: "(3) Even if the money were available, would it be legal for Pettis County to make an unsecured loan to an agency for the purpose of financing this revolving fund?", as stated in the opinion which we are enclosing, this appropriation to the Surplus Commodities Corporation is in the nature of an appropriation for the relief and aid of the poor and needy people. Strictly speaking, it is not a loan such as is referred to and prohibited by the Constitution and statutes.

Article IV, Section 47, of the Constitution prohibits the loan or grant of public money to individuals, associations or corporations, etc., but, as stated in the opinion, and authorities therein cited, this money is expended for a public charity and does not violate the provisions of the Constitution.

Sept. 26, 1940

It will be noted in the City of St. Louis case, cited in the copy of the opinion enclosed, that the city of St. Louis issued bonds for relief purposes, and, therefore, if the County has the funds available for the aforesaid purposes, or if the limitations on the amount of the levy would not authorize a levy sufficient to raise these funds, then, under the St. Louis procedure the funds might be raised by a bond issue authorized by a vote of the people.

CONCLUSION.

Therefore, under the authorities cited in the copy of the Springfield opinion herewith enclosed, it is the opinion of this department that if moneys are available a County may make an unsecured loan or grant of money to the Surplus Commodities Corporation for the purpose of financing the revolving fund used by that corporation in carrying out the purposes for which it was formed, that is for the purpose of encouraging the domestic consumption of certain commodities and by increasing their utilization through benefits and indemnities, donations or other means, among persons in low income groups.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney-General

APPROVED:

COVELL R. HEWITT
(Acting) Attorney-General

TWB:CP