

COUNTY BUDGET ACT: The question as to who is the person keeping the principal financial records of the county and who is to be deemed the "Accounting officer" is a question of fact. the officer appointed "accounting officer" is not entitled to any additional compensation.

December 11, 1937.

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Honorable Maurice Hoffman
Prosecuting Attorney
Buchanan County
St. Joseph, Missouri

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Dear Sir:

This Office acknowledges receipt of your letter of November 29th, wherein you make the following inquiry relative to the County Budget Act:

"The County Budget Act, Laws of 1933, pages 340 to 351, prescribes certain duties to be discharged by an "accounting officer."

"Section 21, of that act provides that, 'wherever the term 'accounting officer' shall appear (in the act) it shall be deemed to mean the county clerk, auditor, accountant, or other officer or employe keeping the principal financial records of the county.'

"I desire your official opinion as to whether the auditor or the clerk is to be deemed to be the one 'keeping the principal financial records of the county', so as to be ex-officio the 'accounting officer', then may the county court appoint and employ some one in its opinion suitable for that office to be the 'accounting officer', and determine the amount of his salary.

"At the present time no one is discharging the functions of that office, and no one has been designated by the County Court to be the 'accounting officer', and no accountant or other person has been employed to keep the 'principal financial records' of this County."

The County Budget Act, Laws of Missouri, 1933, page 341 et seq., is in reality composed of separate sections applying to counties of fifty thousand population or less, and to counties of more than fifty thousand population. Buchanan County being more than fifty thousand population we must determine your answer from Sections 9 to 22, inclusive.

By the terms of Section 9 the County Court may designate the county clerk as budget officer and it is very definitely stated that the budget officer shall receive no extra compensation for his duties under the Act.

Referring to Section 21, page 351, we find that when the term "budget officer" is used in the Act, it shall be deemed to mean the presiding judge of the county court, unless the county court shall have by order designated the county clerk as budget officer. Referring to the term "accounting officer," the section states that "it shall be deemed to mean the county clerk, auditor, accountant, or other officer or employe keeping the principal financial records of the county.

Under Section 11, page 347, it appears that the principal duty of the accounting officer is to prepare the estimates of revenues classifying the same so as to show the receipts by funds, organization units and sources, while the duties of the budget officer appear to be to deal mainly with the estimates of the expenditures of the various departments, offices, institutions and commissions.

The accounting officer is again mentioned in Section 15, page 349. In referring to appropriations, we find the following:

"* * * and until the county court shall act, the accounting officer shall authorize expenditures and draw warrants in payment thereof, * * *"

Referring again to Section 21, it will be noted that it is possible for the county clerk to be both budget officer and accounting officer.

Considering one of the actual questions contained in your letter, to the effect: Who is keeping the principal financial records of the county, the auditor or the clerk? This appears to be a question of fact. You would be in a better position than this Department to answer same, knowing all of the officers, and no doubt having a cursory knowledge of their general duties.

We call your attention to Section 12218, Laws of Missouri, 1933, page 352, the pertinent part of said section being:

"The Auditor shall prescribe with the approval of the County Court, the accounting system of the County. He shall keep an inventory of all County property under the control and management of the various officers and departments and shall annually take an inventory of such property showing the amount, location and estimated value thereof. He shall keep accounts of all appropriations and expenditures made by the County Court, and no warrant shall be drawn or obligation incurred without his certification that an unincumbered balance, sufficient to pay the same, remain in the appropriation account or in the anticipated revenue fund against which such warrant or obligation is to be charged. He shall audit the accounts of all officers of the County annually or upon their retirement from office. The auditor shall audit, examine and adjust all accounts, demands, and claims of every kind and character presented for payment against said county, and shall in his discretion approve to the county court of said county all lawful, true, just and legal accounts, demands and claims of every kind and character payable out of the county revenue or out of any county funds before the same shall be allowed and a warrant issued therefor by said court; * * * * *

It would appear that if your county has the office of county auditor that he would be more familiar with the principal financial records of the county than any other officer, but, as mentioned heretofore, the matter is mainly a question of fact which this Department is unable to pass upon.

Referring to the additional question: "Then may the county court appoint and employ some one in its opinion suitable for that office to be the 'accounting officer,' and determine the amount of his salary?", we are of the opinion that the county court could not appoint some person to carry out the duties of the accounting officer; that the accounting officer must perform the duties by virtue of the fact that he "keeps the principal financial records of the county" and it must be that person. As to additional compensation, it is a well recognized principle of law that no officer can draw salary unless the statute clearly empowers him to do so. The statutes contain no such provision. We are further fortified in this conclusion by the fact that the statute expressly prohibits the budget officer from receiving any extra compensation.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
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