ELEEMOSYNARY INSTITUTIONS: COUNTY COURTS: INSANE PERSONS.
When revenue is 'provided for' within the meaning of the Constitution,defined.Obligation incurred by county,in 1934 can not be paid out of income and revenue provided for such county in the year 1935.Insane county patients may be returned to sending county upon failure to pay keep or expenses of such persons.

December 12,1934

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Honorable W. B. Jameson
Chairman State Eleemosynary Institutions
Jefferson City
Missouri

Dear Mr. Jameson:

Receipt of your letter dated December 10, 1934, in reference to moneys due from Jasper County to State Hospital No. 3, is acknowledged.

Your letter follows:

"The County of Jasper owes to State Hospital #3,Nevada, the sum of $86,527.18. I have been unable to get any action toward the payment of any part of this account from this court.

Does the eleemosynary board have any recourse in a situation of this kind? Would we be justified under the law in returning to Jasper County the patients in this institution for which they so far have failed to pay? They owe other institutions and I would like to have your opinion also cover the other institutions, in the same letter, or I can write you different letters in regard to each one if that is desirable."

1.

Answering first what remedy you have in the situation set out in your letter. Section 8636 Revised Statutes Missouri 1929, reads:

"The several county courts shall have power to send to a state hospital such of their insane poor as may be entitled to admission thereto. The counties thus sending shall pay semi-annually,in cash,in advance,such sums for the support and maintenance of their insane poor, as the board of managers may deem necessary,not exceeding eighteen dollars ($18.00) per month for each patient;and in addition thereto the actual cost of their clothing and the expense of removal to and from the hospital,and if they shall die therein,for burial expenses;and in case such insane poor shall die or be removed from the hospital before the expiration of six months,it shall be the duty of the managers of such hospital to re-refund,or cause to be refunded, the amount that may be remaining in the treasury of such hospital due to the county entitled to the same;and for the purpose of raising the sum of money so provided for,the several county courts shall be and they are hereby expressly authorized and empowered to discount and sell their warrants,issued in such behalf,whenever it becomes necessary to raise said moneys so provided for. And state hospitals are hereby expressly prohibited from receiving any county warrant in payment of any such sum as may be due by this section."

Section 8642, same statutes, provides:

"The superintendent shall,under the direction of the managers, cause,once in every six months,to be made out and forwarded to any county court which may send to a state hospital an insane poor person, an exact accounnt of the sum due and owing by such court on account of such insane person. Said court, at its first session thereafter,

> shall proceed to allow, and cause to be paid over to the treasurer of such state hospital, the amount of said account."

Section 8615, same statutes, clothes the board of managers of eleemosynary institutions with the power to maintain actions for all debts and demands due any state eleemosynary institution. This authority is recognized in Shields v. Johnson County 144 Mo. 76.

The time for payment of the sums due the respective eleemosynary institutions from the respective counties is fixed by the statute, and the time fixed by the statute is the date when the indebtedness, as to each county patient, becomes due and payable by the county. The Board of Managers of the eleemosynary institutions are prohibited from accepting warrants in payment for the keep of county patients. Section 8636, supra. Therefore the question of whether or not the indebtedness from a county to the institution becomes fixed and payable when a warrant is issued, as has been the question in some cases, is not presented here.

We take it that the course above pointed out will not sufficiently answer your inquiry so that we turn to other suggested remedies for the collection of the moneys due you from counties in order to ascertain to what further relief you may be entitled.

2.

(a) The only other means for the collection of moneys due your board, if it be legal, is to be found in Section 14, Laws of Missouri 1933, page 348, being a part of what is known as the County Budget Act. The part of the section referred to reads as follows:

> "Payment of any legal unpaid obligations of any prior year, however, shall be a first charge in the budget against the revenues of the budget year; provided, that any deficit existing at the end of the year preceding that in which this

> act takes effect may be paid over a term of years, or in such other manner as the county court may determine."

We understand that the amounts of money due your board from Jasper County, accrued, became due and payable and was an indebtedness of that county in the year 1934. We assume that the above quoted part of Section 14 means, in your case, that the unpaid sums would be entitled to priority of payment out of the revenues provided for and collected in Jasper County in the year 1935. The quoted part of the above section undertakes to make legal unpaid obligations a first charge against the revenues for 1935. The word 'charge' is used, apparently, as meaning a lien is created. A lien is defined in Koenig v. Leppert-Roos Fur Co. 260 S. W. 756,758, in the following language:

> "A lien is not a property in or right to the thing itself, but constitutes a charge or security thereon."

The validity of that part of Section 14, above set out, must be tested by an application of that part of Section 12 of Article X of the Constitution of Missouri, which reads as follows:

> "No county * * * shall be allowed to become indebted in any manner or for any purpose to an amount exceeding in any year the income and revenue provided for such year * * * * * * *."

The word 'indebted' is defined in Jewell v. Nuhn, et al. 155 N.W. 174,177, in the following language:

> "Webster defines the word 'debt' as: 'That which is due from one person to another, whether money, goods or services; that which one person is bound to pay to

another, or to perform for his benefit; things owed; obligation; liability.'

He defines 'indebted': (1) Brought into debt; being under obligation; held to payment or requital; in debt. (2) Placed under obligation for something received, for which restitution or gratitude is due. And 'indebtedness,' as 'a state of being indebted.' "

Since the above quoted portion of Section 14 seeks to make the unpaid obligation of a county a charge against the revenues for the next subsequent year, the Legislature evidently intended to create a statutory obligation or indebtedness on the part of a county to be paid out of revenues coming in in the year subsequent to that in which the obligation and indebtedness actually accrued.

Such section 14 applies to counties having a population of over fifty thousand and we take notice of the fact that Jasper County has a population of over fifty thousand.

(b) The real question presented is, when and by what means is income and revenue provided for in a year within the meaning of Section 12, Article X, of the Constitution.

(c) Section 9756 Revised Statutes Missouri 1929, requires the assessor or his deputies to take a list of the taxable personal property in his county, between the first days of June and January of each year. The foregoing section does not refer to or include assessments against merchants or manufacturers; that is provided for in other articles of the statute. Section 9756 also requires such assessor to assess real estate as of the first day of June of each year. Section 9779 requires real estate to be assessed and the assessment commenced on the first day of June, 1893, and each year thereafter. The assessor is required to return the assessment list to the county clerk of his county.

Section 9811 provides for a county board of equalization which shall meet at the office of the county clerk on the first Monday of April in each year, the board having power to hear complaints and to equalize the valuations and assessments upon all real and personal property within the county.

Section 9813 provides that the county board of equalization shall meet on the fourth Monday of April, except in counties containing a population of more than seventy thousand and less than one hundred thousand, in which counties such board shall meet on the fourth Monday of March in each year as a board of appeals.

Section 9862 provides that the state board of equalization shall meet at the Capitol in the City of Jefferson on the last Wednesday in February, 1894, and every year thereafter, at which time the State Auditor, by virtue of Section 9863, shall lay before the state board of equalization abstracts of all the taxable property in the state.

Section 9865 provides that when the state board of equalization shall have completed its deliberations, the State Auditor shall immediately transmit to each county clerk the result of the deliberations and orders of the board, to the county clerk of the respective counties affected. Whereupon the clerk of such county shall furnish a copy of the orders of such board to the county assessor and to the county board of equalization for compliance therewith.

Section 9866 Revised Statutes Missouri 1929, provides as follows:

> "There shall be annually levied, assessed and collected on the assessed value of all the real estate and personal property, subject by law to taxation in this state, five cents on each one hundred dollars valuation for state revenue. (R. S. 1919, Sec. 12858. Amended, Laws 1921, p.679; 1921, 1st Ex. Sess. p.186; 1923, p. 366; 1925, p. 369; 1929, p.433.)"

Section 9867 also provides:

"The following named taxes shall hereafter be assessed, levied and collected in the several counties in this state,and only in the manner, and not to exceed the rates prescribed by the Constitution and laws of this state,viz.: The state tax and the tax necessary to pay the funded or bonded debt of the state,the funded or bonded debt of the county, the tax for current county expenditures, the taxes certified as necessary by cities, incorporated towns and villages, and for schools."

Section 9871 is as follows:

"As soon as may be after the assessor's book of each county shall be corrected and adjusted according to law, the county court shall ascertain the sum necessary to be raised for county purposes, and fix the rate of taxes on the several subjects of taxation so as to raise the required sum, and the same to be entered in proper columns in the tax book."

Section 9874 of the statutes,authorizing county courts at the regular May term of each year, to appropriate, apportion and subdivide revenues, was repealed by Laws of Missouri 1933, at page 351. Section 12 of Laws of Missouri 1933, page 348, which appears to have been intended to take the place of section 9874 so far as counties having a population of more than fifty thousand is concerned, reads:

"Sec.12. Budget document -contents.-

The budget document shall include the following: (1) a budget message outlining the fiscal policy of the government for the budget year and describing

> the important features of the budget plan,giving a general budget summary setting forth the aggregate figures of the budget in such manner as to show the balanced relations between total proposed expenditures and total expected income and other means of financing the budget compared with the corresponding figures for the last completed fiscal year and the current fiscal year,and including explanatory schedules classifying expenditures by organization units, objects, and funds, and income by organization units, sources, and funds; (2) the detailed budget estimates, as provided for in the preceding section of this act, showing the recommendations of the budget officer compared with the figures for the last completed fiscal year and the estimates for the current fiscal year; (3) complete drafts of appropriation and revenue orders to put the budget into effect when approved by the county court.
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> The appropriation order shall be drawn in such form as to authorize appropriations for expenditures classified only as to the various spending agencies and the principal subdivisions thereof and as to principal items of expenditure within such subdivisions. Appropriations for the acquisition of property and for expenditures from bond funds shall be in such detail as the budget officer shall determine."

All of the foregoing shows that taxes to be levied against the assessment made in 1933 could not be levied and collected until the year 1934, and that the assessment valuations made by the assessors as of June 1, 1934, would be the basis of the rate of taxation levied and the taxes becoming due in the year 1935, except as to merchants' and manufacturers'

taxes which are assessed, levied and collected in the same year.

In State ex rel. v. Allizon 155 Mo. 325, 333, the court, discussing assessments of property and the time for payment of county warrants, said:

> "The county assessor is required to complete his assessment,and return his book to the county court on or before February 20th. (Sec.7571.). Those persons who conceive themselves aggrieved may appeal from the assessment so returned, to the county board of equalization (sec.7572),which board is to meet on the first Monday in April (sec.7515) to equalize and correct the assessments and adjust the assessor's books,which are then returned to the county court, and that court is required as soon thereafter as may be to 'ascertain the sum necessary to be raised for county purposes, and fix the rate of taxes on the several subjects of taxation' (sec.7660), the limit of which is prescribed,as the Constitution requires, in section 7662. Then it is made the duty of the county court at its May term to appropriate,apportion and subdivide the revenue for the various purposes as prescribed in section 7663.
>
> It thus appears that it is not until the May term that the county court knows exactly what the aggregate assessment of the county is, and it is not until then that the rate of taxation is fixed and the exact amount of revenue to be levied is ascertained. And in view of that condition and of the constitutional provision that forbids a county to incur debts in any one year to exceed its income and revenue provided for that year (sec.12,art.10, Constitution), the relator contends that it conclusively follows that the

fiscal year for the county begins on May 1st. The argument is not without persuasive force to show that it would be a convenient provision if the legislature should see fit to so enact, but it does not demonstrate that the statutes in their present form must receive that construction or fail of their purpose. And we must be forced to that result before we would be justified in giving to the word 'year' an artificial meaning in the face of the rule of construction and definition laid down in the contemporaneous statute above quoted. But really whilst there is some uncertainty it is not very serious. True,from January to May,one-third of the year, the county court can not know the exact amount of revenue that the taxpayers will be called on to furnish. This uncertainty exists because the exact valuation of the taxable property in the county is then unknown, and the rate of taxation has not then been fixed, yet expenses are necessarily incurred in carrying on the county government and maintaining its duty to the State. But is certainty to that degree necessary? Can not the revenue for the ensuing year be estimated on the first of January with sufficient approximation for the purpose of putting reasonably safe limits to the debts to be incurred? Even after May 1st,there must be an element of uncertainty in the amount of the county's income because all may not be collected that is assessed. Ordinarily there is not such a difference between the aggregate assessment of the county for one year,and the following, as would put the county judges to sea, and if any unusual event had taken place since the last assessment likely to produce an extraordinary diminution or

> increase in the value of the county's property,the county judges would be apt to know it. The economic problem for them to solve is the amount of indebtedness it will be prudent to incur for the county for four months in view of the probable income. As a common sense business problem there is nothing very difficult about it, and if county judges are not to be accredited with sufficient discretion to determine a matter of that kind,then our whole system is wrong. The county court can keep safely within the constitutional limitation, and follow strictly the provisions of the statutes above quoted, and still count the fiscal year as beginning on January first, and ending December thirty-first. We have followed the learned counsel for the relator in his brief but we see no reason to question the soundness of the decision in Wilson v. Knox County, supra, or in State ex rel. v. Appleby,supra, to the same effect. Upon a review of the whole subject, we again conclude that the fiscal year for the county as well as the State, begins January first, and ends December thirty-first."

Distinguishing between 'assessment' and 'levies' as related to taxation, Cooley on Taxation, Vol. 3, at page 2114, section 1044, Fourth Edition, said:

> "The word 'assessment,' as used in the decisions and statutes, has various meanings. Property speaking it does not include the levy of taxes although sometimes the words 'assess,' 'assessed,' or 'assessment' are used in a statute as including both the levy and the assessment. An assessment,

> strictly speaking, is an official estimate of the sums which are to constitute the basis of an apportionment of a tax between the individual subjects of taxation within the district. It does not, therefore, of itself lay the charge upon either person or property, but it is a step preliminary thereto, and which is essential to the apportionment. As the word is more commonly employed, an assessment consists in the two processes of listing the persons, property, etc., to be taxed, and of estimating the sums which are to be the guide in an apportionment of the tax between them. When this listing and estimate are completed in such form as the law may have prescribed, nothing remains to be done, in order to determine the individual liability,but the mere arithmetical process of dividing the sum to be raised among the several subjects of taxation, in proportion to the amounts which they are respectively assessed. Sometimes the word 'assessment' is used as implying the completed tax list; that is to say, the list of persons or property to be taxed, with the estimates with which they are chargeable, and the tax duly apportioned and extended upon it; But this employment of the word is unusual except in the cases in which the levy is apportioned by benefits; and in those cases the act of determining the amount of the benefits is of itself, under most statutes, a determination of the individual liability, and the result only needs to be entered upon the roll list to complete the levy. Assessment proper includes valuation but valuation alone is not the assessment but instead only its most important element."

And in section 1045 of the same treatise,it is further said:

> "An assessment, when taxes are to be levied upon a valuation, is obviously indispensable. It is required as the first step in the proceedings against individual subjects of taxation, and is the foundation of all which follow it. Without an assessment they have no support, and are nullities. The assessment is, therefore, the most important of all the proceedings in taxation, and the provisions to insure its accomplishing its office are commonly very full and particular. If there is no valid assessment, a tax sale of lands is a nullity. A want of assessment is not a mere irregularity remedied by a curative statute."

We reach the conclusion that where assessment valuations on property are fixed by the assessor in one year, and the levy of the tax rate and the tax thereunder collectible in the next subsequent year, then the revenue and income is 'provided for', within the meaning of the constitutional provision above quoted, in the latter year.

(d) Can the income and revenue provided for in the year 1935 be used to pay obligations of the county accruing and maturing and being due and payable in the year 1934?

In Book v. Earl 87 Mo. 246, 252, dealing with this question the court said:

> "The evident purpose of the framers of the constitution and the people who adopted it was to abolish, in the administration of county and municipal government, the credit system and establish the cash system by limiting the amount of tax which might be imposed by a county for county purposes, and limiting the expenditures in any given year

> to the amount of revenue which such tax would bring into the treasury for that year. Section 12,supra, is clear and explicit on this point. Under this section the county court might anticipate the revenue collected, and to be collected, for any given year,and contract debts for ordinary current expenses, which would be binding on the county to the extent of the revenue provided for that year, but not in excess of it."

Note from the above decision that the revenue may be anticipated only for the year in which the revenue or income is provided for.

In Andrew County ex rel. v. Schell 135 Mo.31, the Supreme Court had the same question, in principle, under discussion. At page 39 of the opinion it is said:

> "It is indisputable,however,from the facts disclosed by the record, that the warrants are for past indebtedness,and not indebtedness for the current year in which they were presented for payment. A fund to pay such indebtedness can only be raised by compliance with section 7654, Revised Statutes, and in obedience to an order of the circuit court of the county as provided thereby, directing the county court of the county to make a levy for that special purpose. Or in case of an excess of funds in the treasury over and above a sufficient amount to pay the current expenses of the county for any given year, then such excess may be applied to the payment of valid warrants outstanding, in the order in which they may be presented for payment, as provided by section 3166, Revised Statutes."

In Railroad v. Thornton 152 Mo. 570, county warrants issued in 1893, 1894 and 1895 were presented by the railroad company in tender of payment for the taxes levied against the railroad company for the year 1896. Discussing prior decisions of the court, at page 574 it was said:

> "It was also pointed out in Payne's case that it was decided in Schell's case, that: 'County warrants for past indebtedness, though valid, can not be paid from the revenue provided for current expenses, until all warrants, drawn for expenses of the year for which the taxes were levied, have been paid.' It is also a fact that the prior cases and the statutory provisions relied on by the plaintiff, were fully considered in Schell's case. The result reached in the Payne case was not hastily or ill advisedly arrived at, but was the logical effect of a gradually developed understanding and appreciation of the true meaning of the provision of the Constitution quoted."

Analyzing the meaning of the constitutional provision under construction, the court at page 575 of the opinion further said:

> "Under these provisions of the Constitution warrants may be issued to the extent of the revenue provided for the year in which such warrants were issued, and the warrants so issued each year must be paid out of the revenue provided and collected for that year. If the revenue collected for any year for any reason does not equal the revenue provided for that year and hence is not sufficient to meet

> the warrants issued for that year, the deficit thus caused can not be made good out of the revenue provided and collected for any other year until all the warrants drawn and debts contracted for such other year have been paid, or in other words, only the surplus of revenues collected for any one year can be applied to the deficit of any other year. Thus each year's revenue is made applicable, first, to the payment of the debts of that year, and secondly, if there is a surplus any year it may be applied on the debts of a previous year. The intended effect of all which is to abolish the credit system and to establish a cash system in public business. If this rule results in any county not having money enough to pay as it goes or to run its governmental affairs, the remedy is not with the courts. Having reached this understanding of the meaning of the Constitution it follows, without the necessity of any analytical examination or comparison of statutes or prior decisions, that all statutes or decisions providing or holding a contrary rule must give way."

In the case of Trask v. Livingston County 210 Mo. 582, the Supreme Court had under consideration the question of the right of the defendant to pay an obligation incurred in 1889 out of the revenue of 1890. The court quotes with approval from Book v. Earl. Discussing the right to make payment of an 1889 obligation out of 1890 revenue, the court at page 599 of the opinion said:

> "The record shows that the county court on the 5th of September, 1889,

made an appropriation to pay for the building of the bridges. Now, out of what revenue was it authorized to make this appropriation, that of 1889 or that of 1890? We think the Constitution answers this question: they could only make it out of the revenue of 1889, and in this particular case this conclusion is reinforced by the fact that the bridges contracted for were to be completed in the year 1889, and as the obligation was completed in the year 1889, and as the obligation was incurred in 1889 and the bridges were to be built in that year and the appropriation was made in that year, we think there can be no escape from the conclusion that the indebtedness thereby created was a charge against the revenues provided for the year 1889, and not the revenues of 1890. Clearly the county court was not authorized to appropriate revenues which were to be derived from taxation in the year 1890, which such taxes had never been assessed, levied or collected. While the county court may in any one year draw warrants, after the revenue has been provided and the taxes levied within the scope of the levy and income for such year, it is too plain for argument that the Constitution forbids the anticipation of the revenues of any subsequent years; If not, all that has been said in regard to the force and effect of section 12 of article 10 of the Constitution to the effect that its purpose was to put counties upon a cash system instead of the old credit plan, has been made in vain.

In our opinion, the bridge warrants offered and read in evidence were, if valid at all, chargeable against the revenues of said county for 1889,and

> we think should be deducted from the total amount of warrants issued in 1890, and this being so the plaintiff's warrants were a legal and valid charge for the current expenses of the said county for the year 1890 and the judgment of the circuit court awarding plaintiff judgment therefor was correct and is affirmed."

We think it is 'too plain for argument that the Constitution forbids the payment of obligations incurred by a county in 1934 out of income and revenue provided for such county in the year 1935' and that in so far as section 14, Laws of Missouri 1933, page 348, undertakes to authorize the payment of county obligations becoming due and payable in one year out of revenue and income provided for in a subsequent year, such part of section 14 violates section 12 of article 10 of the Constitution of the State of Missouri, and in that respect is void.

What we have said in the foregoing conclusion is upon the assumption that the revenue and income provided for in Jasper County in the year 1935 will be sufficient only to pay the obligations of the county accruing or becoming due in the year 1935.

What we have said herein applies to each and every county in the State, and the City of St.Louis.

3.

Answering further your inquiry, viz:

Will we be justified,under the law,in returning to Jasper County patients in this institution for which they so far have failed to pay?

We have pointed out above that the several county courts of the state have power to send to a state hospital their insane poor and that the sending county shall pay semi-annually, in cash, in advance, such sums

for the support and maintenance of their insane poor as the Board of Managers may deem necessary, not exceeding $18.00 per month for each patient and in addition thereto other necessary costs.

In 32 C. J. 686, Section 373, it is stated:

> "The liability for supporting insane persons may be, and often is, imposed by statute upon various public authorities upon certain conditions. This liability being statutory, the particular public authorities can be held liable in no case, and in no other manner, except as prescribed by statute."

The validity of Section 8636, above referred to, in reference to the liability of counties for the keep of their insane poor, has been upheld by the Supreme Court of this state. In State ex rel. Yarnell v. The Cole County Court 80 Mo. 80, 84, the Supreme Court of this state said:

> "We think it apparent from the above statutory provisions and the general law regulating asylums,* * * * that it was the intention of the legislature to cast the burden of supporting the insane poor upon each county where such insane poor have acquired a residence or settlement.* * * *"

We are unable to find any decision of any court on facts similar to those submitted by you. If the county court is required to pay in advance for the keep of its insane poor, then undoubtedly the Board of Managers of a state eleemosynary institution would have the right to refuse to receive a patient where the county court has not complied with its statutory duty. If the Board of Managers of the state eleemosynary institutions was compelled to retain patients when counties refuse to comply with their statutory duty of paying, in advance, in cash, semi-annually, then it might and logically would result that such state

institution could not be maintained for the keep and care of the insane persons from the counties who were willing to and did pay for the keep of such patients, according to the requirements of the statutes. While the solicitude for the helpless insane is naturally great, yet, so far as the Board of Managers of the state eleemosynary institutions is concerned, it is to operate such institutions according to the mandates of the statutes and with a due regard for all persons whom such institutions were intended to serve.

We are of the opinion that the Board of Managers of the state eleemosynary institutions has the right to return to the custody of the respective counties such county patients where payments for their keep or other expenses, as provided by Section 8636 Revised Statutes Missouri 1929, have not been made by the respective counties from which such payments were due.

The above, of course, does not apply to insane persons transferred from penal institutions to state eleemosynary institutions on order of the Governor.

Yours very truly,

GILBERT LAMB
Assistant Attorney General.

APPROVED:

ROY McKITTRICK
Attorney General.

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