

COUNTY BUDGET ACT: Claims against the county not included in the estimate made at the February 1935 term may be paid out of (1) Classes 5 or 6; (2) out of an ascertainable surplus in any of the other classes; (3) out of delinquent taxes.

3-22

March 21, 1935.



Hon. J.T. Pinnell,  
Prosecuting Attorney,  
Pineville, Missouri.

Dear Sir:

This department is in receipt of your letter of March 7 wherein you enclose a copy of the court's order in the mandamus suit of Herbert Perkins v. Charles Burks, et al; also, a history of the case, and request our opinion on same.

The facts appear to be that Herbert Perkins brought a mandamus suit against the County Court of McDonald County for back salary in the amount of \$437.43 for the year 1931 and there is now due the sum of \$1,137.59 for back salary during the year 1932. We assume that Mr. Perkins has not brought suit for the latter amount for the reason that the former case will decide the latter claim. The Supreme Court has recently passed on the original case and affirmed the judgment of the trial court.

In 1934 the County Budget Act of the State of Missouri became effective and evidently the county court ignored this pending suit. The County Budget Act compels the county court to pass on the estimates for the various classes at the February Term 1934. It is now too late to revise and amend so that the claim can be paid.

The fact that the contempt proceedings are now imminent against members of the county court places the county court in the situation of being fined or punished for contempt, and at the same time, if the mandate of the Supreme Court is carried out, they will be violating Section 8, Laws of Missouri, 1933, page 346, which is as follows:

"Any order of the county court of any county authorizing and/or directing the issuance of any warrant contrary to any provision of this act shall be void and of no binding force or effect; and any

county clerk, county treasurer, or other officer, participating in the issuance or payment of any such warrant shall be liable therefor upon his official bond."

In our opinion it was the duty of the County Court to take into consideration the pendency of this suit and anticipate that the court might eventually be compelled to pay the same. The suit has been pending since 1932 and they at least had constructive notice of the same. Had the court not been negligent or careless in its duty in that respect, the members might have pleaded as an answer to any probable contempt proceedings that the issuance of the warrant and the auditing of the claim of Mr. Perkins would compel them to violate the law as members of the County Court.

Section 2 of the County Budget Act, Laws of Mo. 1933, page 341, provides that the funds of a county such as McDonald County shall be expended from six different classes, each having a priority over the following classes. Section 4 of said Act makes it the duty of the County Clerk to compile, along with other information, the following: "Total unpaid obligations of the county on January 1st of current year".

Your letter contains two questions, i.e., "Please give your opinion as to what the present county court can do about it" and "Can the present county court, under present statutes pay that, and if so, how?" These two questions may be consolidated into one, i.e., Can the present county court under present statutes pay the claim?

As stated above, the estimates of the final budget of the county may be revised and amended at the February Term, but since that term has evidently expired, we know of no way by which the claim might be included in the estimates.

The County Budget Act was passed by the Legislature for the purpose of promoting efficiency and economy in county government. The first four classes are rather rigid in that they include certain specific things and exclude others. We call your attention to Class 5, which provides for contingent and emergency expenses. It is more than possible that the claim of Mr. Perkins could be paid from this class, and of course, if there are any funds in Class 6, the same may be used.

Another method by which the same might be paid is by a surplus in any one of the four other classes. If it could be determined at this time that there will in all probability be a surplus in any one class and no shortage of funds in the class

prior to it, it is possible that such a surplus could be used for paying the claim.

This has long been recognized as the law prior to the enactment of the Budget Act, as has been said in the case of State ex rel. v. Johnson, 162 Mo. 621: (l.c. 630)

\*\*\*\*a warrant valid when issued is not rendered invalid because the revenue provided to pay it is not collected during the year for which it was issued, or is misappropriated by the officers of the county for whose act the holder of the warrant is not responsible.

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(l.c. 621)

"On the contrary, the surplus county revenue remaining after the payment of all current expenses of every kind for the year for which such revenue was levied and collected, may be used in the payment of outstanding valid unpaid county warrants for previous years."

We do not deem the above decision to be relegated or of no force due to the passage of the County Budget Act. We believe that many sections of the County Budget Act are directory and not mandatory--that the spirit and plan of the Act should be carried out conscientiously and to the best judgment of the county court, and if the financial structure of your county is such that the county court can carry out any of the suggestions made above for the payment of the claim, after the same is done the State Auditor should be notified of the change in the financial set-up of your county.

Respectfully submitted,

OLLIVER W. NOLAN,  
Assistant Attorney General.

APPROVED:

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ROY MCKITTRICK,  
Attorney General.