COUNTY BUDGET ACT: County Court cannot transfer funds at the close of the fiscal year to any of the classes for use for the current year if valid and outstanding obligations in the nature of warrants exist.

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May 9, 1935

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Honorable Joseph V. Willhite
Prosecuting Attorney
Grant City, Missouri

Dear Sir:

This Department is in receipt of your letter of April 11, wherein you make the following request:

> "At the request of the County Court and of the County Treasurer I am writing you for an opinion on two propositions.
>
> 1st. The County Court has ordered the County Treasurer to transfer all surplus funds remaining, after the payment of all warrants issued for current expenditures for 1934, in the general Revenue Fund for 1934, the Bridge Fund for 1934, and the Contingent Fund for 1934, or Classes 1, 2, 3, 4, 5 and 6 under the Budget law, into Class 2 for 1935, while as a matter of fact there are numerous outstanding, unpaid warrants for the prior years of 1930, 1931, 1932 and 1933 drawn upon said funds for those years.
>
> Under those conditions, has the court a legal right to transfer said surplus from 1934 to the funds of 1935, instead of applying said surplus to the payment of the oldest outstanding warrants?

2nd. If the Court has no legal right to order such a transfer, is the treasurer protected in making said transfer by the illegal order of the Court?

I am enclosing herewith a copy of the Court Order."

I.

COUNTY COURT CANNOT TRANSFER A SURPLUS REMAINING AT THE END OF THE FISCAL YEAR TO ANY ONE OF THE FIVE CLASSES, TO BE USED IN THE CURRENT YEAR BY THAT CLASS WHEN THERE ARE VALID OUTSTANDING WARRANTS AGAINST THE COUNTY.

We are grateful to you for inclosing the prepared brief of Honorable Ellis Beavers, in support of the contention that the funds mentioned in your letter can legally be placed in Class 2. Evidently the motivating cause which inaugurated the County Budget Act by the Legislature, was to promote economy and efficiency in county government. The Legislature evidently had in mind a situation as presented in the Statement of Facts attached to your letter. The business oftentimes in various counties has been very loosely conducted. The first step of the Legislature in the correcting of the abuses was the passage of Section 9874, in conformity with Sections 11 and 12 of Article XII of the Constitution, it being the intention of said amendment to abolish credit system and establish the cash system in public business.

A decision discussing the financial history of the counties, which will have a bearing on the final conclusion in this opinion, is that of Kansas City, Fort Smith Railway Co. v. Thornton 152 Mo. l. c. 574:

"It was plainly pointed out that the purpose of the constitutional provision quoted was to put counties and cities upon a cash basis, and to abolish the credit system upon which they had proceeded before the adoption of the Constitution of 1875, by prohibiting a county or city from becoming 'indebted in any manner or for any purpose to an amount exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the voters thereof voting at an election to be held for that purpose,' etc. It was also expressly held in Payne's case that this was declared to be the purpose of section 12, article X of the Constitution, in Book v. Earl, and that it was held in that case, that: '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.' 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. As claimed by counsel section 3205 has been on our statute books since 1835, but prior to the adoption of the Constitution of 1875 there was no organic law which stood in the way of its

enforcement. The result was, overwhelming debts were contracted, which necessarily went unpaid or excessive taxation had to be levied to pay them; the effect of which impaired the credit of the counties and cities, engendered recklessness and extravagance in the management of the public business and constantly oppressed the tax-payers. These were the evils that sections 11 and 12 of article X of the Constitution were intended to remedy, first, by limiting the rate of taxation and, second, by limiting the yearly expenses to the revenue provided for each year. The wisdom of these safeguards has been fully demonstrated by the experience and improved financial status of the counties and cities since those provisions were adopted. It is the duty of the courts to enforce the organic law and to brush aside any statute which conflicts with it whether it was passed before or after the Constitution was adopted. 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 revenues 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 revenue 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."

Section 9874, referred to above, is expressly repealed by the County Budget Act, and the five classes originally contained in said section are brought forward in the new Budget Act, with minor changes in the substance of the section, but places the mandatory duty upon the county court to sacredly preserve the priorities of the classes over each succeeding class. The learned attorney insists that under Section 12167 relating to transfer of county funds, and Section 12168 being the construction of Section 12167, that the county court has the legal right to transfer any balance to any of the classes to be used by that class for the current year. We would have no difficulty in agreeing with the learned attorney in the applicability of said section to the point in the question if it were not for the fact that there are outstanding warrants against your county. The decision in the case of Decker v. Diemer 229 Mo. l. c. 336, unquestionably bears him out in his contention, but the case of Holloway v. Howell County 240 Mo. l. c. 612,613, also bears out his contention if it were not for the fact the court in its decision said:

> "But if there was, then under certain statutory conditions, the county court had the right to transfer it to other proper funds and use it for county purposes for ensuing years or existing deficits, if any, after all contracts entered into with reference to the current year creating present indebtedness have been complied with and all outstanding current county obligations had been satisfied."

Therefore, we can agree with the learned attorney to the extent that if there is a surplus at the close of the fiscal year the same may be transferred under the sections herein referred to, but we cannot agree with him that the transfer of the funds can be made if there are valid outstanding warrants which have been issued out of said funds. We shall next discuss our reasons for our views to the contrary.

Class 6, page 342, Laws of Missouri 1933, contains the provision that: "if there be outstanding warrants constituting legal obligations such warrants shall first be paid before any expenditure is authorized under class 6." And, again, under Section 5, page 344, Laws of Missouri 1933, "Nor may any warrant be drawn or any obligation be incurred in class 6 until all outstanding lawful warrants for prior years shall have been paid." Under Section 4, page 343, it becomes the duty of the county clerk, among others, to list,"Less outstanding warrants for preceding years as follows: (list total by years) Less all known lawful obligations against the county December 31,last, and for which warrants were not drawn at that date (itemized list of these obligations must be attached to the estimate) Total unpaid obligations of the county on January 1st of current year. (This shall include unpaid warrants and outstanding bills for which warrants may issue)." Thus it will be noted that the county court, in preparing the Budget and carrying out the terms of the county Budget Act should have before them a complete financial picture of the county.

We consider the case of State ex rel. v. Johnson 162 Mo. l. c. 631, to be authority as to how the surplus funds remaining at the end of the current year may be used,

> "This section then had been the law of this State for twenty years before the adoption of the Constitution of 1875. Prior to that, it was not necessary that a county warrant should be drawn upon a special fund or that it should come to the holder during the year in

which the indebtedness was created. What, then, was the effect of the Constitution upon this section? As was ruled in Andrew County v. Schell, 135 Mo. 31, and State ex rel. V. Payne, 151 Mo. 670, that section was modified by the Constitution to the extent that thereafter the warrants drawn by the county court in any year to meet all the necessary and current expenses for that year must first be paid in full in the order of their registration, and if a surplus was left, then the section operated on all other warrants just as it had previous to the adoption of the Constitution of 1875. In a word, that section, in so far only as it conflicted with the provisions of section 12 of article 10 of the Constitution,became inoperative by force of the Constitution as soon as it went into effect, because inconsistent therewith. But with this exception there is no such repugnancy as requires us to hold it was absolutely repealed,the rule of construction being that before it shall be construed as repealed by implication only, the two must be so repugnant that both can not stand, and, we think,with the modification we have mentioned, both can stand. Such has been the opinion of the Legislature, we think, from the fact that this section has been preserved through three revisions since the adoption of the Constitution. We conclude that this surplus, after the current expenses for the years 1895 and 1896 had all been paid, at once became subject to this general statute,section 3166, Revised Statutes 1889, which provides a just and equitable rule for the payment of the debts of the counties. The preferred right of payment according to registration is not taken away further than the changed condition wrought by the Constitution requires, and when the Constitution is read into and with this section, it merely changes the order of payment so that the funds provided for each year's

> expenses is primarily the fund out of which warrants drawn for those expenses are to be paid according to their presentation and registration in that year, and when they are all paid and a surplus, as in this case, remains, then it is applicable to unpaid warrants of former years and section 6771, Revised Statutes 1899, provides the rule of priority, just as it did before its modification by the Constitution of 1875, and the surplus is not to be distributed pro rata."

In the case of Trask v. Livingston County 210 Mo. l. c. 597, wherein the court was considering the question of using funds for expenditures in future years, said;

> "It has been very recently considered, in its application to the subject in hand, by the Court In Banc, and the conclusion was announced that such an obligation to pay an agreed sum, year by year, for the furnishing of certain necessary supplies during a term of twenty years, was not an immediate indebtedness for the entire amount that might ultimately become due by installments during that term. (Saleno v. Neosho, 127 Mo. 627.) It will, we think, be seen upon close examination of Saleno v. Neosho and the Lamar cases that the great question was whether there was an aggregate indebtedness created in the beginning which would exceed the debt-making power of the corporation or whether the indebtedness should be treated only as an obligation which would arise from year to year as the water contracted for was furnished, and in order to ascertain whether the municipal corporation was transgressing the constitutional limit regard was had only to the amount which might fall due within a certain year and if the revenue for that year was sufficient over and above the payment

> of other expenses, then there was no debt incurred within the constitutional prohibition. In other words it was practically decided that although the contract was for twenty years it was considered by the court from the debt-creating point of view as if it had been twenty separate contracts, one covering each year. And the authorities all agree that if the amount to be paid in any year under such a contract exceeds the income and revenues for such year against which it is a charge, it would be invalid, at least to the extent of such excess. There are many considerations which in our opinion sustain the decisions in those cases, but they afford no authority for holding that the county court in this State under the Bridge Act can contract for a supply of bridges covering a period of years, one bridge to be built each designated year and to be paid for out of the revenue for the year in which it shall be built. All the provisions of the Bridge Act are inconsistent with any such power in the county court."

The above decision deals with an entirely separate matter but we believe that the principle involved is the same.

The latest decision of the court in relation to our question is State ex rel. Clark County v. Hackmann 280 Mo. l. c. 696. This decision reviews all of the early cases, as follows:

> "It is suggested that the warrants which furnished the basis of the judgment mentioned were the accumulations of years. Also that many other counties are situated just as is Clark County. We need not blind our eyes to facts which everybody knows. The counties of the State, in

anticipation of their yearly revenue, issue warrants against such revenue. The county authorities know from the assessed values and the tax rates just what revenue should come in for the year. They often issue warrants up to the very limit of the anticipated revenue, and these warrants we have held to be valid obligations of the county. This, on the theory that the warrants represent valid contracts made during the year. By valid contracts we mean contracts within the anticipated revenue of the year. Thus in Trask v. Livingston County, 210 Mo. l. c. 594, it is said:

'It has been uniformly construed that this provision of the Constitution permits the anticipation of the current revenues to the extent of the year's income in which the debt is contracted or created, and prohibits the anticipation of the revenues of any future year.'

So also in State ex rel. v. Johnson,162 Mo. l. c. 629, it is said:

'It was ruled in Book v. Earl, 87 Mo.246, that '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,' But it was at the same time said: "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."

It was then anticipated that, though the county court might not issue warrants in excess of the levy for a year's current expenses, and that a creditor might rely upon the fact that his contract was within the amount of revenue levied and provided, and trust to the power of the State to enforce its taxes, still it might happen from some unforeseen cause enough of the estimated amount of revenue might not be collected to pay all the warrants drawn against it in anticipation. Under such circumstances it has never been ruled that such a creditor's warrant was absolutely void and extinguished by the non-payment in the year in which it was drawn. On the contrary, this court has often said in no uncertain terms that it was valid and payable out of any surplus revenue in the hands of the county treasurer that might arise in the hands of the county treasurer that might arise in subsequent years. (Randolph v. Knox County, 114 Mo. 142; Andrew County v. Schell, 135 Mo. 1. c. 39; State ex rel. v. Payne,151 Mo. 1. c. 673; Railroad Co. v. Thornton,152 Mo. 570; State ex rel. v. Allison, 155 Mo. 1.c.344; and on this point, Reynolds v. Norman, 114 Mo. 509). '

By failure to collect taxes, and other reasons, there are many valid outstanding county warrants in the several counties of the State - nearly $2,000,000 dollars according to reports. By valid outstanding warrants, we mean warrants issued for the current expenses of the year, and warrants which, when issued, were within the anticipated revenue of the year. By the issuance of the bonds involved here, Clark County is seeking to discharge the judgments upon warrants of this character. This we say because the validity of the warrants is vouched for by court judgments.

> If Clark County is successful, the other counties, to use a homely expression, 'will follow suit'.
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> As said in State ex rel. W. Johnson, supra, warrants of this character are not invalid because the revenue for the year (as collected) does not meet them, for they may be paid out of the surplus revenues of future years. Of course, there could be no surplus until all debts of the current year have been provided for or met. Up to this time we have not gone further in the protection of such warrants, so that we have a new idea suggested by the instant case. Such indebtedness should be paid, if any legal and constitutional method can be devised. The question is, has Clark County devised such a method?"

CONCLUSION

We are of the opinion that the county court does not have the authority to place the surplus funds at the close of a fiscal year, into one of the five classes, and there be used for the current year when there are valid outstanding obligations in the nature of warrants against the county. It is the duty of the county court to sacredly preserve the priorities of the classes, and this must be done in the manner and in the amount as the anticipated revenue for the current year will permit. If the county court fails to provide adequate funds for class 2 for the current year from the anticipated revenue, it was its duty to so do, as class 2 has a priority over 3, 4 and 5.

II

THE COUNTY TREASURER IS NOT PROTECTED IF FUNDS ARE UNLAWFULLY TRANSFERRED BY THE COUNTY COURT.

The first eight sections of the County Budget Act are applicable to counties of the population of Worth.

Section 8 contains the following paragraph;

> "Any order of the county court of any county authorizing and/or directing the issuance of any warrant contrary to any provisions 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."

Having come to the conclusion, in the question above, that the county court would not have any legal authority to transfer the surplus funds,at the close of the fiscal year, to Class 2 and there be used for the current expenditures of 1935, we are of the opinion that it would naturally follow that the county treasurer, under the above provision, would be liable on his bond for the funds wrongfully transferred and used.

Respectfully submitted,

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APPROVED:

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