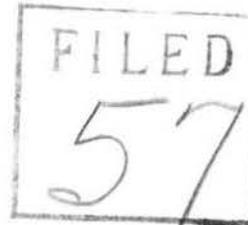


COUNTY COURT: Judges of County Court cannot borrow money personally to pay unappropriated debts of county.

1-8
January 7, 1936.



Honorable G. Logan Marr,
Prosecuting Attorney,
Morgan County,
Versailles, Missouri.

Dear Sir:

This department is in receipt of your letter of December 10 requesting an opinion as to the following situation in your county:

"The end of the fiscal year is near. The County Court has about used all the revenues of the year, except some delinquent taxes of former years and a few collections not apportioned and unappropriated in the budget. The county court has created certain debts now due. The budget does not cover these expenses. Now the county court makes the proposition that they borrow personally the money, pay the debts by calling the same a loan, take the receipt of the creditor of the county with the understanding that the creditor be issued a warrant and that the same be indorsed back to the order of the individual members of the county court.

"These warrants to take these debts of the county are to be issued by the county court sometime after the start of the fiscal year in 1936, after the 1st day of February, and are purported to be issued out of revenues collected from the revenues of the year 1935, the year the debts were created.

"The individual members of the county court advance the money and expect to be reimbursed later out of the funds collected from 1935. But the reimbursement is by the members of the court to themselves individually. After reading section 4090 and 4092-1929, it seems apparent that the

court has laid themselves liable in allowing these accounts with the understanding that the payee of the warrant shall be the creditor, who will in turn indorse the same back to the county judge for reimbursement.

"What is your opinion of the legal consequences of the arrangement to meet the current accounts and later reimburse the county judges by the issuing of these warrants?"

From a reading of your letter we cannot determine whether or not the County Court has already carried the plan into execution or contemplate carrying it into execution. However, as we will look at the matter purely from its legal aspects, that feature will be disregarded.

The terms of the County Budget Act, passed by the General Assembly in 1933 (Laws of Mo. 1933, p. 340), make it compulsory on the county court at the regular February Term each year to classify expenditures into six classes, making each class a priority over each succeeding class. Section 8 thereof provides in part 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."

It is to be noted that by the terms of the above provision any warrant drawn contrary to the provisions of the County Budget Act is void and of no binding force or effect and any one participating in the issuance of such warrant is liable on his official bond.

We shall next proceed to discuss the effect of the other features of the proposed plan. We are constrained to say that this plan of financing the county is most unique and has never before come to the writer's attention. Granting that the County Court has nothing but the most conscientious motives in offering to advance their own personal funds for the debts of the county, we cannot do otherwise than condemn the plan in its

entirety regardless of the serious situation which may confront the members of the County Court.

There are a number of statutes which bear indirectly on the question of the liability of the different members criminally. Section 4090 R.S. Mo. 1929 provides:

"Any member of the county court, common council or board of trustees, or officer or agent of any county, city, town, village, school township, school district, or other municipal corporation, who shall, in his official capacity, willfully or corruptly vote for, assent to or report in favor of, or allow or certify for allowance, any claim or demand, or any part thereof, against the county, city, town, village, school township, school district or other municipal corporation, of which he is such officer or agent, or against the county court, common council or board of trustees of which he is a member, such claim or demand, or part thereof, being for or on account of any contract or demand or service not authorized or made as provided or required by law--every such person so offending shall, on conviction, be punished by imprisonment in the penitentiary not more than five years, or by a fine of not less than one hundred nor more than five thousand dollars, or by imprisonment in the county jail not less than two nor more than twelve months, or by both such fine and imprisonment."

Section 4094, R.S. Mo. 1929 bears on the criminal liability which may be incurred by the members of the county court, and is as follows:

"Every clerk of a court of record, sheriff, marshal, constable, collector of public revenue, or deputy of any such officer, or a judge of a county court, prosecuting attorney or county treasurer, who shall traffic for or purchase at less than the par value or speculate in any county warrant issued by order of the county court of his county, or in any claim or demand held against such county, shall be

adjudged guilty of a misdemeanor, and shall, upon conviction, be punished by fine not less than twenty nor more than fifty dollars."

Section 4092, R.S. Mo. 1929 provides:

"No judge or justice of any county court in this state shall, either directly or indirectly, become a party to any contract to which such county is a party, or act as any road or bridge commissioner, either general or special, or as keeper of any poor person, or as director in any railroad company in which such county or any township, part of township, city or incorporated town therein is a stockholder, or act as agent for the subscription of any stock voted to any railroad by any county or subdivision thereof; any such judge or justice who shall violate any of the provisions of this section shall be adjudged guilty of a misdemeanor."

CONCLUSION

In view of the provisions of Section 4092, supra, it would appear that the County Court of your county is attempting to contract on behalf of the county with the individual members thereof, which is clearly in violation of said section, and we accordingly so hold.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General.

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney General.