

COUNTIES - Contracts: County Court cannot contract for a rock crusher when part payment must be made from the revenue of future years. If payment is contemplated out of revenue of year in which contract is made, same may be done without violating County Budget Act if sufficient funds remain in Classes 5 and 6 even though same was not included in the estimate for the fiscal year.

9-12

September 11, 1936.



Mr. C.W. McKim,
County Clerk,
Worth County,
Grant City, Missouri.

Dear Sir:

This department is in receipt of your letter of recent date, making the following inquiry:

"Can the Worth County Court buy a rock crusher at this time, paying part down and obligating the county court next year to pay the remainder?"

In this instance, the question to be determined is whether or not the county court can contract this year for a rock crusher, paying a stipulated amount down at the time of the purchase and obligating the county to pay the remainder next year. Your letter is supplemented by a letter from Mr. Wolter of the Karcher-Wolter Equipment Company to the effect that \$500 is to be paid at this time and the balance of \$1750 is to be paid February 15, 1937.

It is a general rule of law that a county court cannot obligate funds or the revenue of future years for past or present indebtedness. We think the decision in the case of Trask v. Livingston County, 210 Mo. 582 prohibits your county from contracting for the rock crusher at the present time wherein it obligates itself to pay \$500 at the time of purchase, the balance to be paid in the year 1937 out of the 1937 revenue.

A more recent case in which all the prior authorities are reviewed and in which the determining factor is whether or not the contract is executory and contingent is that of Ebert v. Jackson County, 70 S.W. (2d) 918, wherein the court passes on the question of a county binding itself to pay rent in future years. In that case the Court said (l.c. 920):

"In the instant case the contract was not executory and contingent. It purports to bind the county to pay plaintiff \$4,320 for the use of the room for four years, beginning August 1, 1925, payable \$90 on the first day of each month, in advance. These payments were to be paid from the income and revenue of future years as well as from the income and revenue provided for the year the contract became effective. It was an unconditional promise made by the county on July 18, 1925, to pay the rent in advance on the first day of each month for four years. The payment of the rent was not contingent upon the occupancy of the room by the justice or on plaintiff's furnishing it to the county for that purpose."

In the case which you present, we do not think there is any contingency in the contract.. It is a definite sum for a definite purpose - the county obligates itself to pay a certain amount for a rock crusher. Therefore, we are of the opinion that if you contemplate paying the balance due and owing for the rock crusher out of 1937 revenue, the same is illegal and void.

Looking at the question from the standpoint of the contract being made in the year 1936 to be paid out of the revenue of 1936, we are confronted with the question of whether or not the debt created under the contract exceeds the anticipated revenue of 1936. The fact that the county would not have the funds or collect all of its anticipated revenue, would not void the contract. We refer you to the case of *Watson v. Kerr*, 312 Mo. 549, wherein the court said:

"If, at the time of the creation, indebtedness is within the income reasonably anticipated, it is valid."

Likewise, in the case of *Kirtley v. Schell*, 36 S.W. 206, 135 Mo. 31:

"A county warrant, duly issued

for the legitimate expenses of the county, and which, together with prior warrants issued for the same purpose during the same year, does not exceed in amount the revenue provided for that year, is valid, though a sufficient amount may not be collected from such levy to pay all warrants so issued."

Class 3 of the Act (Laws of Mo. 1933, p. 341) makes no reference to road equipment, referring solely to the repair and upkeep of bridges--in fact, none of the classes make reference to road funds unless, perhaps the same could be included under Class 5 - contingent, incidental and emergency expenses. If there are sufficient funds without jeopardizing the estimates under Class 5, we think the initial payment on the rock crusher could be made from the funds in that class.

The Legislature, in enacting the County Budget Act and dividing the revenue of the county into five classes, has not used specific and definite terms with reference to road and bridge funds and has made no mention by direct reference to the special road and bridge fund, for which every county in the State exacts various rates of taxation. Section 1 of the Budget Act states:

" * * * Whenever the term revenue is used in this act it shall be understood and taken to mean the ordinary or general revenue to be used for the current expenses of the county as is provided by this act regardless of the source from which derived."

This department has never ruled on the question of road and bridge funds being subject to the Budget Act but has ruled that the Special Road and Bridge Fund is not subject to the Act. An opinion to that effect was rendered on January 21, 1936 to the Honorable O.A. Kamp, Prosecuting Attorney of Montgomery County, copy of which is hereto attached. Of course, if your county has any funds in Class 6 and the conditions of Class 6 can be met, the surplus could be used for the initial payment on the rock crusher irrespective of whether or not road and bridge funds are subject to the Act. However, we are of the opinion that the funds derived from the road and bridge tax are subject to the terms of the Budget Act.

CONCLUSION

In the last analysis, the question resolves itself into whether or not your county can spend the sum necessary for the purchase of the rock crusher without jeopardizing the priorities of the classes. If the money for the initial payment is taken from the Special Road and Bridge Fund, then, of course, the budget does not have to be taken into consideration. If the county court can make the payment from Class 5 without jeopardizing the other estimated and contemplated items under that class, it is the opinion of this department that it is legal and proper to do so.

If your county is in dire need of the rock crusher, the same could be considered an emergency item. Not having before us the financial condition of your county with regard to the budget, we cannot pass on the question further than to say that if the financial condition of your county will permit, subject to the conclusions we have offered above, the rock crusher may be purchased.

The above conclusion, however, is based on the assumption that the entire purchase price of the rock crusher will be paid out of 1936 revenue. If the balance of the purchase price, i.e., \$1750 is to be paid from the revenue of 1937, it is our opinion that the contract is void and illegal for the reasons heretofore stated in this opinion.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General.

APPROVED:

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

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