

COUNTY WARRANTS: Under County Budget Act counties can protest warrants.

August 19, 1936.

9-3



Mr. Frank D. Sheible,
County Treasurer,
Hillsboro, Missouri.

Dear Sir:

This department is in receipt of your letter asking for an opinion regarding tax exemption warrants, which is as follows:

"Have been in conversation with our local County Collector, Mr. William C. Kerckhoff, who spent the last two days of last week in Jefferson City at a collectors convention, and he advises me that in a speech or talk you made before the convention, you stated that County Treasurers are not permitted to register any county tax anticipation warrants of any character whatsoever under the new budget law.

"Would be very grateful if you would have your office write me advising as to whether it is true that no warrants may be protested, as frankly, we have been registering warrants which bear a six per cent interest return and prior interpretations of the law in regard thereto have advised me that it was the proper method of handling them.

"Certain it is however, that if the practice is illegal, this office wishes to immediately desist and would appreciate your immediate response to this query, so as to take the matter up at once with the County Court."

In 1933 the Legislature passed the County Budget Act (Laws of Mo. 1933, pp. 340 et seq.), the primary purpose of which was to promote efficiency and economy in county government. Under Section 2 thereof, proposed expenditures are classified in six classes, each class having priority over each succeeding class, but in reality only five classes are mandatory, the office of the sixth class appearing to be directory as to any surplus remaining after provision has been made for the other five classes.

Section 22 of the County Budget Act expressly repeals Sections 9874, 9985 and 9986, R.S. Mo. 1929 insofar as they conflict with the Act, and in addition any other sections which may be in conflict therewith. Prior to the passage of the Budget Act, Section 9874, R.S. Mo. 1929 provided for the apportionment and subdivision of the revenues of the several counties of the State into five classes, but said section contained no provision that each class should have priority over each succeeding class, and there was no provision to the effect that if the priorities were not sacredly preserved, the officers participating in the issuance of warrants contrary to the Act should suffer penalties.

In enacting the Budget Act, it was necessary to repeal Section 9985, R.S. Mo. 1929, which dealt with the apportionment of county funds, and Section 9986, which dealt with the manner in which the County Treasurer was to keep the funds in his hands.

Sections 12139 and 12140, R.S. Mo. 1929 contain the procedure for the County Treasurer, in keeping a list of the warrants issued and the manner in which the same are to be paid out, but do not appear to be in direct conflict with the Budget Act. Therefore, we conclude that the general statutes regulating and controlling funds of the county and the general financial set-up of the county are not abolished or in direct conflict with the County Budget Act; hence, do not prevent a county from issuing tax anticipation warrants, or to use the ordinary parlance of a county - "protested warrants".

The argument has been advanced that it was the purpose of the Budget Act to compel counties to proceed in the future on a strictly cash basis. It is our opinion, as before stated, that the purpose of the Act was to promote economy and efficiency in county government and to have a complete picture of the financial set-up of the county before the County Court at all times, thus eliminating poor business methods such as existed in the past; however, we do not believe it was the intention of the Legislature, nor can we glean it from the Act itself, that counties should have on hand funds before disbursing the same. In theory, our county government has been on a cash basis for a number of years.

In the case of *Trask v. Livingston County*, 210 Mo. 582, the Court makes the following pertinent statement:

"Const. Art. 10, Sec. 12 * * * providing that no county shall be allowed to become indebted to an amount exceeding in any year the income and revenue provided for such year, permits the anticipation of the current revenues to the extent of the year's income in which the debt is contracted or created, but prohibits the anticipation of the revenues of any future years; the object of the provision being to abolish the credit system in the administration of county government and establish the cash system."

In the case of *State ex rel. National Bank of Rolla v. Johnson*, 162 Mo. 621, after stating that the purpose of Art. X, Section 12 of the Constitution was to place counties on a cash basis, the Court said:

"Const. Art. 10, Sec. 12, prohibiting any county from becoming indebted in any year in an amount in excess of its revenues, does not invalidate a county warrant which is valid when issued, because the available funds are exhausted before it is reached for payment, but it is payable from the surplus of the revenue collected in subsequent years remaining after paying current expenses for such years."

Again, we repeat there is apparently no conflict in the County Budget Act and the sections of the statutes which remain unrepealed governing the financial structure of the county. We shall examine the Act itself to determine whether or not there is any direct conflict in the same. The terms of Section 4, page 343, throw some light on the question, as this section places the burden on the county clerk to require certain memoranda not later than the 1st day of February of each year, and among the items to be listed are:

Cash balance in county revenue fund
January 1 of current year

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 1 of current year

Net cash balance on hand January 1st
of current year

If revenue is overdrawn the estimate
shall show amount of overdraft in red
ink.

Items under estimated receipts to which we will later make
reference are:

If an overdraft, show in red ink

Estimated from taxes for ordinary
revenue for current year

Total estimated county revenue for
the current year from all sources

Ten per cent shall be deducted from
total for delinquent taxes to get the
net amount estimated for purposes of
budget

If any expenditure under class six
is anticipated the budget (so far as
expenditures under class six is con-
cerned) must be balanced on the actual
cash on hand and not on estimated
revenue.

Under the Constitution of Missouri, a county court cannot
issue warrants in excess of the anticipated revenue; if such warrants

are issued, they are void and invalid. The Legislature seems to have taken the added precaution of stating that ten per cent shall be deducted from the total estimated revenue for delinquent taxes. We do not think, nor could it have been practical, for the Legislature in enacting the Budget Act to have compelled the county to have on hand cash for the five prior classes at the time the estimate of the classes was made. As always, the disbursements to be made of the funds allotted to the various classes is anticipated revenue; the revenue for an assessment made in 1935 is spent in 1936. Therefore, we conclude that there is no provision in the Budget Act itself which prevents a county from issuing tax anticipation warrants, or protested warrants.

Knowing that the county usually contracts with a local bank, which modestly charges 6% interest at the least, the question arises from what source is the county to derive funds, or how is the county to anticipate the amount of interest that must be paid? Bearing in mind that the county court has the authority to issue warrants not in excess of its total anticipated revenue, and that it would be unusual for a county to receive or collect its total anticipated revenue, and bearing in mind further that the Budget Act states the county court must deduct 10% of the total amount of the anticipated revenue for the year, it is our opinion that out of the 10% remaining could be estimated or allotted for the purpose of paying the interest on protested warrants. It is reasonable to assume that one of the reasons for deducting the 10% from the anticipated revenue by the Legislature was for this very purpose. The holder of a warrant is by statute entitled to interest, which the county is bound to pay, regardless of the county's authority to protest warrants.

A further question arises as to the class in which the county court could place the amount of the estimate for paying interest on protested warrants. The only class in which the estimate could be placed, in our opinion, is Class 5, which refers to contingent, incidental and emergency expense, and this, we think, the county court could do.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General.

APPROVED:

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