

COUNTY BUDGET: County Clerk cannot be compelled to draw warrant on 1939 funds for 1938 debt, where there is no surplus.

February 16th, 1939.

2-18



Hon. Paul N. Chitwood,  
Prosecuting Attorney,  
Reynolds County,  
Centerville, Missouri.

Dear Sir:

This will acknowledge receipt of your letter of February 7th, 1939, which is as follows:

"The following copy of a county court order made at the February term, (February 7th, 1938) is as follows:

"Now at this time the court takes up the matter of appointment of a Deputy State Health Commissioner for Reynolds County as authorized by section 9025, Laws of Missouri, 1933, page 271, and after due consideration of said matter and the court being fully advised appoints Dr. J. R. Pyrtle to said office for a period of one year at a fixed salary of \$400 per year \* \* \* \*"

An opinion from your office several months ago among other matters, provides that the County Physician is a County Officer, and that his salary warrant is to be written upon the funds in class number 4, of the County Budget Laws.

In the instant case, it appears from the County Court records that nothing was appropriated in this class with which to pay the County Physician, or rather Deputy State Health Commissioner, as the statute terms him. It further appears that at the present term of the County Court (the preparing of the budget for 1939, being the most important business) nothing is being appropriated in this funds for the payment of Dr. Pyrtle's account which has been filed and approved.

Mr. Lloyd Hill, the new County Clerk of this County has refused to take any part whatever in the writing of a county warrant on Class NO. 4, of the 1939 budget, (when completed) for the reason that he contends that the county is in anticipation of law on a cash cash basis and that warrants should not be written with which to pay indebtedness for past years unless there is a surplus left over, which is not the fact in this case.

Kindly let me know your opinion at your earliest convenience as to what remedy may be had, if any, compelling the County Clerk to write a warrant to the Dr. for his services."

The question is as we see it; May a warrant be drawn on the 1939 budget and funds to pay an obligation incurred in 1938, when there is no surplus in 1939 funds? This opinion will be confined strictly to that question and is in no way to be construed as ruling whether or not an officer's

Hon. Paul N. Chitwood - 3 - February 16, 1939.

salary can be paid at all if he fails to file his estimate (Sec. 6, Laws of 1933, p. 344), or the court fails or refuses to appropriate an amount in Class Four to pay him (Sec. 5, Laws of 1933, p. 344).

In Kansas City, Fort Scott and Memphis Railroad Company v. Thornton, 152 Mo. 570, 575, the court on a similar question, said:

"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 revenue 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 constitutional provisions referred to by the court in the Thornton case are Sections 11 and 12 of Article 10. Of course, now there is a limitation

of ninety percent on the amount of the anticipated revenue which the court may spend. (Sec. 4, Laws of 1933, p. 343).

Under this case it is clear that funds raised to pay the obligations for the year 1939 cannot be applied to the payment of the debts of a prior year, unless there is a surplus in the 1939 funds. You state in your letter that no such surplus exists.

Any debt contracted in the year 1938 must be paid by a warrant drawn on that year's revenue (or the surplus of another year). This is to be seen by what is said in the Thornton case l. c. 575, where the court held that the constitution made "each year's revenue \*\*\*\* applicable \*\*\*\* to the payment of the debts of that year."

With respect to compelling the county clerk to draw and attest the warrant in question we direct your attention to the last paragraph of Section 8, Laws of 1933, p. 345, 346, providing that:

"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."

This would also be true of any such order violative of the constitution.

Hon. Paul N. Chitwood - 5 - February 16, 1939.

It needs no citation of authority to establish that no proceeding could be instituted against the county clerk to compel him to do that which the constitution and laws say shall not be done.

CONCLUSION

Therefore, it is our opinion that a county clerk cannot be compelled to draw and attest a warrant on 1939 funds to pay a debt incurred for the year 1938, when there is no surplus in said 1939 funds.

Respectfully submitted,

APPROVED:

LAWRENCE L. BRADLEY,  
Assistant Attorney General.

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(Acting) Attorney General.

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