

FOOD STAMP PLAN: Counties under 50,000 inhabitants may participate in Food Stamp Plan if expenditure properly budgeted, but have no authority to borrow funds against unknown future revenue for this purpose.

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April 21, 1941

Honorable Eldon W. Palmer  
Clerk, County Court  
Butler County  
Poplar Bluff, Missouri



Dear Sir:

Under date of April 18th, 1941, you wrote this office asking for an opinion as follows:

"The Chamber of Commerce of Poplar Bluff, all of the business men of this city, together with the County Court of Butler County, want to put in operation the food stamp plan in the County.

"In order to do this there must be a revolving fund created in the amount of \$7500.00. The Bankers of this city have agreed that if the County Court will issue them a warrant in the amount of \$7500.00 that they will hold this warrant as a revolving fund, asking the County to pay only the interest each year.

"Kindly advise us if the County Court can legally issue this warrant, or in other words, borrow that amount of money under the budget set up.

April 21, 1941

"The City of Poplar Bluff will, or is willing to bear one-half of the above necessary expense.

"Kindly advise us at once if this can be done, as there is to be a mass meeting on Tuesday, April 22nd, and we wish to have your reply on this matter at that time."

Your letter is very brief and omits some facts which would be very helpful in preparing the opinion. You fail to state whether or not the amount of the proposed warrant is within the anticipated and estimated revenue of Butler County and whether or not an item for the food stamp plan was included in the county budget. Inasmuch as your letter asks if the county can "borrow" we are assuming that the amount of the proposed warrant is not within the estimated revenue.

The food stamp plan is a plan whereby the Surplus Commodities Corporation, acting with the Federal Department of Agriculture under the Agriculture Adjustment Act, distributes surplus food commodities to persons on relief. The plan is authorized by Section 612c, Title 7, U.S.C.A., which is in part as follows:

"\* \* \* (2) encourage the domestic consumption of such commodities or products by diverting them, by the payment of benefits or indemnities or by other means, from the normal channels of trade and commerce or by increasing their utilization through benefits, indemnities, donations or by other means, among persons in low income groups as determined by the Secretary of Agriculture; \* \* \* \* \*"

and by Section 713c, Title 15, U.S.C.A., which section is as follows:

"In carrying out the provisions of clause (2) of section 612c of Title 7, as amended, the Secretary of Agriculture may transfer to the Federal Surplus Commodities Corporation, which Corporation is hereby continued, until June 30, 1942, as an agency of the United States under the direction of the Secretary of Agriculture, such funds, appropriated by said section 612c, as may be necessary for the purpose of effectuating said clause (2) of section 612c: Provided, That such transferred funds, together with other funds of the Corporation, may be used for purchasing, exchanging, processing, distributing, disposing, transporting, storing, and handling of agricultural commodities and products thereof and inspection costs, commissions, and other incidental costs and expenses, without regard to the provisions of existing law governing the expenditure of public funds and for administrative expenses, including rent, printing and binding, and the employment of persons and means, in the District of Columbia and elsewhere, such employment of persons to be in accordance with the provisions of law applicable to the employment of persons by the Agricultural Adjustment Administration.

"In carrying out clause (2) of Section 612c, the funds appropriated by said section may be used for the purchase, without regard to the provisions of

existing law governing the expenditure of public funds, of agricultural commodities and products thereof, and such commodities, as well as agricultural commodities and products thereof purchased under the preceding paragraph hereof, may be donated for relief purposes."

The first thing to be determined is whether or not county funds could be lawfully used for the purpose of setting up a revolving fund in connection with this plan to distribute food to persons on relief. The funds of the county are derived by taxation from the people and must be used for public purposes.

In the case of Jasper County Farm Bureau v. Jasper County, 286 S. W. 381, also reported in 315 Mo. 560, the question was whether or not public funds could be appropriated by the Jasper County Farm Bureau, and such use of the county funds was upheld and, in discussing the matter, the Supreme Court said:

"It is also true that many objects for which money may be appropriated are so clearly public in their nature that there could not well be any difference of opinion on the subject, such, for example, as public charities, and appropriations provided for the care of the indigent, destitute, and insane, either in institutions exclusively under state control or those maintained by corporations for purely charitable purposes. In 1894 this court, in banc, in the case of State ex rel. City of St. Louis v. Seibert, 123 Mo. 424, 24 S. W. 750, 27 S. W. 624, held that an appropriation for the support of the indigent insane in the asylum of the city of St. Louis who belonged to

the state outside of the city was not unconstitutional even though such insane asylum was a private institution of such city and was not one of the state eleemosynary institutions. So also public funds appropriated for the state and county system of schools. Likewise the expending of public funds in the construction of necessary public buildings and the construction and maintenance of public roads. On the other hand, there are many other enterprises helpful to the public in the community in which they are located, and that contribute very largely to the development and progress of the state, that are so purely private in their nature as not to admit of any doubt about the matter. Such, for example, are manufacturing or commercial enterprises established and maintained by private individuals or corporations for purely private gain.

"There are also many purposes for which public money may be appropriated from the use of which some persons derive more benefit than others, but this circumstance does not detract from the fact that their chief function is to administer to the public good, although the enjoyment and advantages derived from their maintenance are not distributed equally, even between members of the public who are situated alike or in the same class. If it were essential to the establishment or existence of an enterprise to be set up and sustained by public aid that all members of the public or all members of any class should derive from it

the same or like benefits or advantages, then it would be entirely impossible to describe a public enterprise in aid of which public funds might be set apart.

"The truth of this statement is so obvious that no elaboration is needed. It is seen in the operation and conduct of all those uses that are so distinctly public in their nature as to leave no room for doubt as to their public character. There is no public institution, public road, public bridge, public hospital, or public park from which some persons do not derive more benefit than others. It is not, however, necessary that the whole body of the contributing public shall be directly benefited or receive the advantages accruing from the establishment of the object in aid of which public funds may be set apart. It will be sufficient if it should be of such a character as that it promotes the general welfare and prosperity of the people who are taxed to sustain it."

And in the more recent case of *Jennings v. City of St. Louis, et al.*, 58 S. W. (2d) 979, a case in which the legality of a bond issue to provide funds for relief was upheld, the Supreme Court used the following language, at page 981:

"The appellant concedes that the city of St. Louis has the right, and in fact the obligation, to expend its money for the support, maintenance, and care of destitute children and others who may be destitute by reason

of sickness, age, insanity, or physical deficiencies. But he contends that the city has no right to spend the taxpayer's money upon persons who may be destitute solely by reason of the present economic situation. He contends that the real purpose of the bonds is to provide for the man who is able-bodied and capable of working, but unable to find work because of the widespread unemployment that is prevalent throughout this entire nation of which we take judicial knowledge. City and County of San Francisco v. Collins (Cal. Sup.) 13 P. (2d) 912; State ex rel. v. Industrial Commission, 207 Wis. 652, 242 N. W. 321.

"The good of society demands that when a person 'is without means, and unable, on account of some bodily or mental infirmity, or other unavoidable cause, to earn a livelihood,' he is entitled to be supported at the expense of the public. 'It is immaterial how the alleged pauper is brought into need, as it is the fact of the situation and not the method of producing it that is important.' 'So the fact that a person's want is the result of gross intemperance does not prevent him from securing relief as a pauper.' 'An able-bodied man, who can, if he chooses obtain employment which will enable him to maintain himself and family, but refuses to accept employment, is not entitled to public relief, though relief may

be properly extended to the wives and children of such men.' 21 R. C. L. 705, 706. It necessarily follows that an able-bodied man, who is unable to obtain employment on account of the economic conditions existing at the time, and who is without means of support, is entitled to public relief."

And the Court further said, in the same case, at page 982:

"We, therefore, hold that the ordinances authorizing the issuance of these bonds are for a 'public purpose.' They undertake to provide relief for people of the city of St. Louis who are unable to care for themselves, and to relieve them of their condition, and it is immaterial what caused their condition."

Under the above cited cases it is apparent that the food stamp plan would be a public purpose for which the funds of a county might be used if the county had conferred upon it authority under which the county court could properly appropriate the funds for that purpose. In Article 2 of Chapter 73, R. S. Mo. 1939, is the county budget law, first enacted in 1933. This law was enacted for the purpose of providing a system for the management of the financial affairs of the various counties of the state. It directs the classification of county expenditures into six different classes and the making of a budget estimate, listing expenditures and classifying them according to the statutory classification into which they fall. In Section 10911 of this Article and Chapter in directing that the county court shall classify the proposed expenditures is the following:

"\* \* \* From this class the county court may pay contingent and incidental expenses and expense of paupers not otherwise classified. \* \* \*"

(Underscoring ours.)

And, under Class 6 in this same section is the following:

"\* \* \* the county court may expend  
any balance for any lawful purpose:  
\* \* \* \*."

From the above it is apparent that it is within the power of the county court of Butler County to appropriate the funds of the county to participate in the food stamp plan and such appropriation is properly included in the budget estimate under Class 5, or when there is an unexpended balance in Class 6.

The first eight sections of the County Budget Act, 10910 to 10917, inclusive, apply to counties having a population of 50,000 inhabitants or less and the remaining sections of the Act apply only to counties having a population of more than 50,000 inhabitants. Inasmuch as the population of Butler County, by the 1940 Census, was 34,276 inhabitants only the first eight sections of the Budget Act apply to Butler County. In these first eight sections there is no provision made for a county having a population of 50,000 or less inhabitants to borrow money. The only authority a county of this size has to borrow money is found in Section 12 of Article X of the Constitution of Missouri. The first clause of this section is as follows:

"No county, city, town, township, school district or other political corporation or subdivision of the State shall be allowed to become 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 consent of two-thirds of the voters thereof voting on such proposition, at an election to be held for that purpose; \* \* \* \* \*"

CONCLUSION.

It is our conclusion that participation in the food stamp plan is a legitimate use for county funds; but before county funds may be used for such purpose an item should be included in the county budget showing such contemplated use, or, that there should be an unexpended balance in Class 6 of the budget of the county and that the expenditure is within the anticipated and estimated revenue of the county. Further, that it would be illegal for a county to issue a warrant against some unanticipated and unestimated funds and place this warrant in the hands of a bank to be used as security upon which to borrow money to participate in the food stamp plan.

Respectfully submitted,

W. O. JACKSON  
Assistant Attorney-General

APPROVED:

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VANE C. THURLO  
(Acting) Attorney-General

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