

COUNTY COURTS:

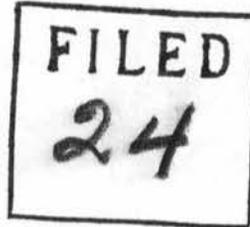
POWER TO BORROW MONEY
AGAINST FISCAL YEAR'S
TAXES AND REVENUES:

(County Courts of Class Two counties may borrow
(against fiscal year's taxes and revenues; have
(the discretion to advertise for bids concerning
(proposed borrowings; Section 50.060, RSMo 1949,
(is only statute allowing such borrowings;
(Section 50.660, RSMo 1949, has no connection
(with or bearing upon Section 50.060, supra.

4-26-51

April 25, 1951

Honorable John E. Downs
Prosecuting Attorney
Buchanan County
St. Joseph, Missouri



Dear Sir:

We have before us your letter of February 10, 1951,
which has been assigned to the writer for an opinion.
It contains three separate questions and the pertinent
part is as follows:

"Will you please advise this office
as to whether or not -

"1. Section 50.060 of the Revised
Statutes of 1949 is the only section
pertaining to the borrowing of money
by Class 2 Counties?

* * * * *

"3. Does Section 50.660 of Revised
Statutes of 1949 relative to rules
governing contracts have any bearing
on this problem in the opinion of
your office?

"4. If Section 50.660 has no bearing
on this problem, would it be unlawful
for the County Court to advertise for
bids, when borrowing money, under
Section 50.060?"

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First, let us take up Section 50.060, Revised Statutes of Missouri, 1949, which reads as follows:

"The county court of counties of classes one and two may borrow money in anticipation of the collection of taxes and revenues for the current fiscal year. The amount of such loans shall at no time exceed ninety per cent of the estimated collectible taxes and revenues for the year yet uncollected. The county court shall determine the amount and terms of such loans, and shall execute and issue warrants of the county for all money so borrowed to the lenders thereof as evidence of such loans and of the terms of the county's obligation to repay the same; and immediately before their delivery to such lenders such warrants shall be registered in the office of the clerk of the county court, and upon delivery shall also be registered in the office of the county treasurer by entry upon the books provided pursuant to section 50.220, correctly stating the date, amount, serial number, in whose favor drawn, by whom presented and the date presented to the treasurer for registration, and such warrants so issued and registered in connection with such loans shall have preference and priority in payment, from the date of their registration by the treasurer over all warrants subsequently issued, and over all prior issued and then unregistered warrants."

This section, under Chapter 50, carries the heading, "County Finances and Budget," and under the subhead, "Current Indebtedness." We are convinced from going into this matter that this is the only statute allowing class two counties to borrow money in anticipation of the collection of taxes and revenues for the current fiscal year. It sets the percentage of the anticipated taxes and revenues as yet

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uncollected that such loans shall not exceed. It states that the county court shall determine the amount and terms of such loans, that it shall execute and issue warrants for all money so borrowed, to the lenders, as evidence of the county's indebtedness and the terms of its obligations to repay. It further sets out that, before delivery to the lenders, such warrants shall be first registered with the county clerk. Upon delivery these warrants shall be registered with the county treasurer, who enters them in accordance with procedure set out in said statute, and that they shall have preference over all warrants issued subsequent to the date of their registration with the treasurer and over all warrants prior issued and then unregistered.

Our search does not reveal any other statute allowing class two counties to borrow money against anticipated taxes and revenues for the current fiscal year.

Secondly, let us take up your second question asking if Section 50.660, RSMo 1949, has any bearing on Section 50.060, supra. We do not think this section has any bearing on the action authorized to be taken by the county court under Section 50.060. Although Section 50.660 also comes under Chapter 50, RSMo 1949, it comes under the subhead, "County Budget Laws," and it itself has to do with contracts made under the budget and appropriations made to the various county departments. Under these facts we think it has no application to Section 50.060, supra.

In answer to your third question, Section 50.060, supra, does not specifically require the county court to advertise for bids when borrowing money under this section. The statute provides that "the county court shall determine the amount and terms of such loans." This authorization gives to the county court the discretion as to the method of making the loans. As said in 67 C.J.S. 403:

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"However, when an official duty is imposed by statute and no specific method is prescribed for performing it, the officer must nevertheless comply with the statutory requirement, if it is reasonably possible to do so, and may adopt any mode reasonably suitable to carry the duty imposed into effect."

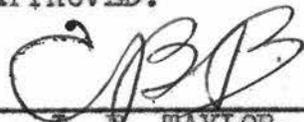
CONCLUSION

It is, therefore, the opinion of this department that Section 50.060, RSMo 1949, is the only section of the Missouri Revised Statutes that applies to and allows counties of the second class to borrow money against anticipated taxes and revenues for the current fiscal year; that Section 50.660, RSMo 1949, has no connection with or bearing upon Section 50.060, supra; that in counties of the second class the county court can lawfully advertise for bids under the terms of Section 50.060, supra, although this requirement is not set out therein.

Respectfully submitted,

A. BERTRAM ELAM,
Assistant Attorney General.

APPROVED:



J. M. TAYLOR,
Attorney General.