

COUNTY COURTS:
SHERIFFS:
COUNTY FARM BUREAU:

Amount of appropriation for support of county farm organization lies within the county court's discretion.
Fixing of deputy sheriff's salary lies within discretion of circuit judge; county court without authority in this regard.

2-3-51

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FILED
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Honorable Homer F. Williams
Prosecuting Attorney
Bollinger County
Marble Hill, Missouri

Dear Mr. Williams:

Your recent opinion request reads as follows:

"The County court of this county, a county of the 4th class, has heretofore been paying to the Farm Bureau of the county the sum of \$1000.00 annually for assistance in their operation which the court understands is mandatory under the Law. This year the Bureau turned in a much larger demand and the court does not feel that they are able to make any larger contribution than heretofore. Under the law can they be compelled to contribute more than \$1000.00 for the support of the Farm bureau of the county?"

"They are also interested in the matter of the salary of a Deputy Sheriff who has heretofore been paid the sum of \$50.00 per month by the county court and who actually gives very little time to the work of the office. Lately the new Circuit Judge made an order raising the salary of the deputy to \$100.00 per month. Does the county court have any discretion or do they have to pay this increase merely because ordered by the Circuit court. They don't feel that they should pay it out of the county funds under the circumstances."

I.

The first question presented in your opinion request is whether or not the county court of Bollinger County, a county

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of the fourth class, can be compelled to appropriate out of the general funds of the county a sum greater than \$1000.00 for the support of the county farm bureau, when said farm bureau in its budget requests a greater sum.

Section 262.550, RSMo 1949 reads as follows:

"For the purpose of promoting the public welfare and to aid in diffusing among the people of the state of Missouri useful and practical information on subjects relating to agriculture, home economics and rural life, and to encourage application of the same, the county court of each county of the state is hereby authorized and empowered and subject to the conditions herein specified shall appropriate out of the general funds of the county sums to be administered by a county farm organization under the conditions herein specified. (L. 1943 p. 319 Sec 2)"

The conditions referred to in the above statute are found in Section 262.580, RSMo 1949, which reads as follows:

"The board of directors of the county farm organization, in cooperation with the county court and the University of Missouri college of agriculture, shall prepare an annual financial budget covering the county's share of the cost of carrying on cooperative extension work in agriculture and home economics provided for in sections 262.550 to 262.620, which shall be filed with the county court of such county, and shall be included by said county court in class four of the budget of county expenditures for such year in counties budgeting the county expenditures by classes and in all other counties in the budget document, subject to the following restrictions:

"In counties of the first and second classes, the minimum appropriation shall be two thousand five hundred dollars. In counties of the third class, the minimum appropriation shall be two thousand dollars. In counties of the fourth

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class, the minimum appropriation shall be one thousand dollars; provided, that no county shall appropriate more than fifty cents per capita of the rural population as determined by the latest decennial federal census; provided further, that in any year in which the county farm organization approves a budget of lesser amount than is herein provided, then the lesser amount so approved shall be appropriated by the county court. (L. 1943 p. 319 Sec. 5, A.L. 1945 p. 100 Sec. 5)"
(Underscoring ours.)

Section 50.740, RSMo 1949 of the county budget law applying to counties of the fourth class, provides in part:

"It is hereby made the first duty of the county court at its regular February term to go over the estimates and revise and amend the same in such way as to promote efficiency and economy in county government. The court may alter or change any estimate as public interest may require and to balance the budget, first giving the person preparing supporting data an opportunity to be heard but the county court shall have no power to reduce the amounts required to be set aside for classes one and three below that provided for herein. After the county court shall have revised the estimate it shall be the duty of the clerk of said court forthwith to enter such revised estimate on the record of the said court and the court shall forthwith enter thereon its approval.
*****"

The county court's authority to alter or change any estimate presented to it to be included in the county budget as public interest may require is discussed in the case of *Bradford vs. Phelps County*, 210 S.W. (2d) 996, 357 Mo. 830. In this case the county court reduced the amount included by the prosecuting attorney in his estimate as stenographic expense. The court stated at l.c. 999, 1000 as follows:

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"County courts as the managerial agents of the county have the duty to so manage the county's fiscal affairs as to comply with Section 26, Article VI, Constitution of Missouri, 1945, providing (inter alia) limitations on indebtedness of local governments. Section 10910 as amended, Laws of Missouri, 1945, pp. 610, 611, of County Budget Law, supra, Mo.R.S.A. Sec. 10910. The County Budget Law makes it more expedient for the county court to perform its duty, that is, the County Budget Law provides 'ways and means for a county to record the obligations incurred and thereby enable it to keep the expenditures within the income.' Traub v. Buchanan County, 341 Mo. 727, 108 S.W. 2d 340,342. It is evident from the language of the County Budget Law that county courts in complying with the Law have duties of a discretionary nature in examining, revising and changing the estimates of the county's expenditures to the end of promoting the standard of 'efficiency and economy in county government,' Section 10917, supra. * * * * *

"As was the county court in the Daues case exercising discretion in reducing the compensation to the county treasurer to an amount which it deemed 'just and reasonable' (the standard stated in the statute involved in that case) so was the county court in the case at bar, in examining, revising and changing the estimates as required by the County Budget Law, exercising discretionary action in the public interest and with the purpose of promoting 'efficiency and economy in county government.'"

The county court, therefore, is authorized to appropriate out of the general funds of the county a sum to be administered by a county farm organization. Their authority in this regard, however, is subject to limitations. In counties of the fourth class, absent approval by the county farm organization of a

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budget of a lesser amount, a minimum appropriation of \$1000.00 shall be made. There is also a maximum amount which can be appropriated for this purpose. In those instances where a budget is submitted by the county farm bureau amounting to a sum greater than the minimum required by statute, the county court has the authority as conferred by Section 50.740, supra, to alter or change any estimate as public interest may require and to balance the budget. The exercise of this authority is a matter entirely discretionary with the county court. Therefore, the county court can in no way be compelled to contribute a sum greater than \$1000.00 for support of the county's farm bureau.

It is further stated in Bradford vs. Phelps County, supra, at l.c. 1001 that:

"We have noticed the Legislature has seen fit to delegate to the county court discretionary powers and duties under Section 10917 of the County Budget Law--the county court can be said to be 'the agency most familiar with the fiscal affairs and financial condition of the county' (State ex rel. Dietrich v. Daues, supra; State ex rel. Dwyer v. Nolte, supra), as well as the agency most likely to soundly budget estimated receipts and expenditures to the end of efficiency and economy in county government. It seems the county court's exercise of its discretion in the performance of its statutory and discretionary duty should not be interfered with, vacated or set aside, except in a case where it is clear the county court in acting abused or arbitrarily exercised its discretion (or, if such were the charge, acted fraudulently or corruptly)."

We therefore see that as long as the county court exercises its discretion in the matter of the instant appropriation, its action cannot be controlled in any way. Only when there is an abuse of this discretion through fraudulent or arbitrary exercise of same can the county court's action in this regard be interfered with.

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II.

The answer to your second question is supplied by Section 57.250, RSMo 1949, which reads as follows:

"The sheriff in counties of the third and fourth classes shall be entitled to such number of deputies and assistants, to be appointed by such official, with the approval of the judge of the circuit court, as such judge shall deem necessary for the prompt and proper discharge of his duties relative to the enforcement of the criminal law of this state.

The judge of the circuit court, in his order permitting the sheriff to appoint deputies or assistants, shall fix the compensation of such deputies or assistants. The circuit judge shall annually, and oftener if necessary, review his order fixing the number and compensation of the deputies and assistants and in setting such number and compensation shall have due regard for the financial condition of the county. Each such order shall be entered of record and a certified copy thereof shall be filed in the office of the county clerk. The sheriff may at any time discharge any deputy or assistant and may regulate the time of his or her employment. (L. 1945 p. 1547 Sec. 2, L. 1945 p. 1562 Sec. 2, A. 1949 H. B. 2015)"

The county court has no statutory authority whatsoever with regard to the fixing of the salary of the deputy sheriff. Section 57.250, supra, makes it the duty and authorizes the judge of the circuit court, and he alone, to fix the compensation of deputy sheriffs.

In State ex rel. vs. Daues, 287 S.W. 430, 315 Mo. 701, the statutory authority of the county court to "allow the treasurer for his services under this article such compensation as may be deemed just and reasonable" was in question. Regarding this authority, the court stated at l.c. 431:

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"It requires no citation of authority to show that the power to prescribe a salary as an incident to a public office is purely legislative in character. That power, as respects the office of county treasurer, the Legislature has delegated to the county court, the agency most familiar with the fiscal affairs and financial condition of the county, as well as the services required to be performed by the treasurer--which may vary in different counties and at different times in the same county. The only limitation upon the power is that the compensation allowed thereunder be such as may be deemed just and reasonable. What is just and reasonable in a given case is committed to the discretion of the county court and to it only. * * * * *"

We, therefore, see that the exercise by the judge of the circuit court of his authority to fix the compensation of deputy sheriffs pursuant to Section 57.250, supra, is a matter lying entirely within his discretion. The county court is without any authority in this regard. Only when this discretion of the circuit judge is abused by arbitrary or fraudulent exercise of same may his action be interfered with.

CONCLUSION

It is therefore the opinion of this department that:

1. The county court of counties of the fourth class cannot be compelled to contribute more than \$1000.00 for the support of the county farm organization when the budget filed with the county court by said county farm organization amounts to a sum greater than \$1000.00 as their appropriation therefor is a matter lying entirely within their discretion. Only when there is an abuse of this discretion through fraudulent or arbitrary exercise of same can the county court's action in this regard be interfered with.

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2. The county court is without authority with regard to the fixing of the compensation of the deputy sheriffs as this is a matter lying entirely within the discretion of the judges of the circuit court. Here again only an abuse of this discretion will warrant interference with his action thereon.

Respectfully submitted,

RICHARD H. VOSS
Assistant Attorney General

APPROVED

J.E.J.

J. E. TAYLOR
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