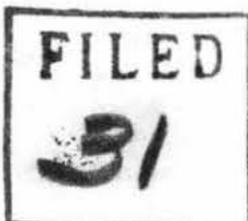


COUNTY BUDGET LAW:

Surpluses in Class 1, 2 and 4 may be transferred to Class 5 although the surplus exceeds the fund budgeted under this class.



February 15, 1952

2-15-52

Honorable Robert H. Frost
Prosecuting Attorney of
Clinton County
Plattsburg, Missouri

Dear Sir:

Reference is made to your recent request for an official opinion of this department. Your request reads as follows:

"At the request of the County Court of Clinton County, I am requesting your opinion on the proper procedure the Court must take to transfer surplus funds in Classes 1-2-4 to the Contingent Fund in Class 5. Our county has a large surplus in these three funds and also have some legal obligations which could be paid out of Class 5 but there are not sufficient funds in this Class to pay them.

"Your opinion of November 21, 1946 to the Prosecuting Attorney of Lewis County states that this can be done, but our county treasurer refuses to make the transfer on the theory that by doing so we would have to increase our budget in Class 5.

"Will you please let me have your opinion as soon as possible so that we can close this matter before making the new budget."

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The County Budget Law (Sections 50.670 to 50.740, RSMo 1949), applicable to third class counties provides that the county court shall prepare a budget of estimated receipts and expenditures for the year beginning January first and ending December thirty-first.

Section 50.670, RSMo 1949, provides in part as follows:

"* * *The county courts of the several counties of this state are hereby authorized, empowered and directed and it shall be their duty, at the regular February term of said court in every year, to prepare and enter of record and to file with the county treasurer and the state auditor a budget of estimated receipts and expenditures for the year beginning January first, and ending December thirty-first. The receipts shall show the cash balance on hand as of January first and not obligated, also all revenue collected and an estimate of all revenue to be collected, also all moneys received or estimated to be received during the current year. * * *The county court shall classify proposed expenditures according to the classification herein provided and priority of payment shall be adequately provided according to the said classification and such priority shall be sacredly preserved."

Section 50.680, RSMo 1949, provides for Class 5 of the budget as follows:

"The county court shall next set aside a fund for the contingent and emergency expense of the county, the court may transfer any surplus funds from classes one, two, three, four to class five to be used as contingent and emergency expense. From this class the county court may pay contingent and incidental expenses and expense of paupers not otherwise classified. No payment shall be allowed from the funds in this class for any personal service (whether salary, fees,

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wages or any other emoluments of any kind
whatever) estimated for in preceding classes."

Section 50.710, RSMo 1949, provides:

"Contingent and emergency expense. -
The county court may transfer any
surplus funds from class one, two,
three, and four to class five to be
used as contingent and emergency ex-
penses. Purposes for which the court
proposes the funds in this class shall
be used shall be shown."

As you have indicated in your opinion request, this department, in an opinion to the Honorable D. W. Wilson, Prosecuting Attorney of Lewis County, November 21, 1946, held that the county court under the provisions of Sections 50.680 and 50.710, RSMo 1949, could transfer surpluses in classes one, two and four to a contingent fund in class five of the budget to pay contingent and emergency claims provided such claims are valid obligations of the county. Apparently the county treasurer of Clinton County refuses to make the transfer on the theory that such a transfer would amount to a revision of the county budget for the year 1951. We believe that such a position is untenable as may clearly be shown by a hypothetical example. Suppose for purposes of simplicity, the estimated receipts of a given year included the unencumbered surplus from the preceding year totalled six thousand dollars, the county court, under the provisions of Section 50.670 is required to draw up a budget based upon the total receipts and expenditures specifying six classes as provided in Section 50.680, RSMo 1949. Now suppose that the county court in considering the estimated receipts and expenditures see fit to allocate one thousand dollars to each of the six classes. Under this scheme one thousand dollars would be budgeted under class 5. Assuming once again that the one thousand dollars in this class had been expended for authorized purposes and there is a surplus in class one, two and four, if the county court could not transfer such surpluses to class five because only one thousand dollars had been budgeted under class five then the provisions of Section 50.680 and 50.710 would be meaningless.

It is a primary rule of construction for which we need cite no authority, that every part of a statute should be given effect if at all possible. It is noted that prior to 1941, there was no provision in the County Budget Law for transferring surpluses from

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one class to another. However, the legislature saw fit to allow a greater flexibility in the County Budget Law and authorized such a transfer as are provided in Sections 50.680 and 50.710. We are of the opinion that Sections 50.680 and 50.710, RSMo 1949, is sufficient authorization for such a transfer even though the additional amount was not budgeted under class five. However, such funds must be used for the purposes provided for under class five.

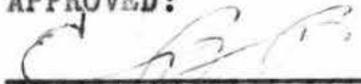
CONCLUSION

Therefore, it is the opinion of this department that the county court may transfer surpluses in classes one, two and four to class five of the budget to pay contingent and emergency claims budgeted under said class although the total expenditures under class five may exceed the original fund provided and budgeted under this class.

Respectfully submitted,

D. D. GUFFEY
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

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