

COUNTY BUDGET ACT: Circuit Judge may purchase books for office from Class 5 providing he does not jeopardize listed and estimated expenditures in Class 5, or same may be paid out of any available funds in Class 6.

6-13

June 13, 1935



Hon. Alfred C. Jones,  
Clerk of Circuit Court,  
Randolph County,  
Moberly, Missouri.

Dear Sir:

This department is in receipt of a letter under date of June 6, 1935 from Hon. Aubrey R. Hammett, Judge of the Ninth Judicial Circuit, requesting that an opinion be rendered relative to certain law books needed for his library in Moberly. He requests that the opinion be rendered to you, and we accordingly follow his instructions. His letter is as follows:

"The Circuit Court at Moberly was created by act of Legislature found at page 116, in the Session Acts of 1885. Section 2 of the act provides that the Circuit Judge of the Randolph County Court shall select a suitable place for holding said court, at the city of Moberly, and for the various offices herein provided for. Further on in said section it provides: 'and cause the same and said offices to be furnished in a proper manner for said Court and its officers and report the rental cost and expense thereof to the County Court of Randolph County which shall pay the same as other claims against said County are paid, out of the county treasury.' Section 7 provides: 'The books, stationary, furniture, fuel, light, rent and other incidental expenses necessary for said Court and offices shall be, from time to time supplies and paid for out of the county treasury.'

"I am wondering if, as Circuit Judge, I would not have the right to buy a few very much needed books for the office of Circuit

Judge at the City of Moberly, namely, the Missouri Digest, Southwestern Reporter, beginning where the higher courts began cutting part of their decisions out of the regular bound reports, Shepard's Citator, and possibly Kelly's Criminal Guide, and a book on instructions.

"Would you be good enough to give us your opinion on this letter and address your opinion to the Clerk of the Circuit Court at Moberly, Missouri?"

The County of Randolph has two places for holding court, viz., Moberly and Huntsville. In 1885 the Legislature of Missouri established the place of holding court in Moberly. Laws of Missouri 1885, page 116, Sec. 2, provides as follows:

"The judge of the circuit court in Randolph County shall select a suitable place for holding said court at the city of Moberly, and for the various offices herein provided for, and the place so selected by the said judge for the holding the said courts shall be known and designated as the court house at the city of Moberly; and cause the same and said offices to be furnished in a proper manner for said court and its officers and report the rental, cost and expense thereof to the county court of Randolph county, which shall pay the same as other claims against said county are paid out of the county treasury, and the judge of said court may change the place of holding said court in said city of Moberly when he deems it advisable, to some other place in said city."

It will be noted that the above section gives the Circuit Judge authority to furnish proper offices and equip the same. Section 7 of the same Act provides:

"The books, stationery, furniture,

fuel, light, rent and other incidental expenses necessary for said court and offices shall be from time to time supplied and paid for out of the county treasury."

It must be conceded that a circuit judge has the authority to equip his office with the law books essential thereto. However, the question arises as to whether or not the County Budget Act, now in effect, would preclude the purchase of such books at this time. Laws of Missouri, 1933, Sec. 1, page 341 contains the following provision:

"\* \* \*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 1 and ending December 31."

Section 2 of the Act (same page) divides proposed expenditures into six classes. The first four classes are definite in their terms and preclude the purchase of the books enumerated from those classes. Class 4 is as follows:

"The county court shall next set aside the amount required to pay the salaries of all county officers where the same is by law made payable out of the ordinary revenue of the county, together with the estimated amount necessary for the conduct of the offices of such officers, including stamps, stationery, blanks and other office supplies as are authorized by law. Only supplies for current office use and of an expendible nature shall be included in this class. Furniture, office machines and equipment of whatever kind shall be listed under class six."

The salaries and supplies of an expendible nature mentioned in Class 4 refer to county officers. A circuit judge receives his salary from the State of Missouri; his salary, therefore, is not included in the estimate in Class 4 and in our opinion the supplies for his office cannot be included in the estimate for that class.

Under Sec. 3 of the County Budget Act (Laws of Mo. 1933, page 342) it is made the duty of every officer claiming any payment for salary or supplies to furnish to the clerk of the county court on or before the 15th day of January of each year an itemized statement of the estimated amount so required. Evidently, the Circuit Judge made no request at that time for the books in question, and we are assuming that the county court did not include any such estimate in making up the final budget, and this question now arises several months after the filing of the budget.

Class 5, Section 2 of the Act is as follows (page 342):

"The county court shall next set aside a fund for the contingent and emergency expense of the county, which shall in no case be more than one-fifth of the anticipated revenue. 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, wages or any other emoluments of any kind whatever) estimated for in preceding classes."

Under Section 5 of the County Budget Act (page 344) the classes of expenditures are set out and the duties of the county court enumerated. Relating to the classification of Class 5, the statute says:

"Contingent and emergency expense, not to exceed one-fifth of the total estimated revenue to be received. Purposes for which the court proposes the funds in this class shall be used shall be shown."

CONCLUSION

It must be conceded that the books enumerated by the Circuit Judge are highly essential to his office as Circuit Judge of Randolph County, and that such books should be in the library of every circuit judge; hence, we deem the request therefor to be an emergency expense within the meaning of the statute.

As above stated, it is the duty of the county court to list the "purposes for which the court proposes the funds in Class 5 shall be used shall be shown", and it is assumed that the cost of the necessary books was not included or listed. However, it is the opinion of this department that if there are sufficient funds in Class 5 to pay for said books without jeopardizing the payment of the listed proposed expenditures, the books may be purchased.

We are further of the opinion that if there are any funds in Class 6, the cost of the books may be paid therefrom, as the statute provides "the county court may expend any balance for any lawful purpose."

Respectfully submitted,

OLLIVER W. NOLEN,  
Assistant Attorney General.

APPROVED:

---

JOHN W. HOFFMAN, Jr.,  
(Acting) Attorney General

OWN:AH