

COUNTY BUDGET ACT: Appropriation made to County Farm Bureau organizations should be placed in Class 6; County Health Officer in Class 4; Government Relief Officer in Class 6; Probation Officer in Class 4; County Highway Engineer in Class 4.

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12-21

December 19, 1935

Mr. R. L. Jones  
County Clerk  
New Madrid County  
New Madrid, Missouri



Dear Sir;

This Department is in receipt of your letter regarding questions which have arisen in connection with the County Budget Act, Laws of Missouri 1933, page 340. Your letter is as follows:

"Some few days ago, one of your assistants called in our office to check our payments to the State Institutions, and called our attention to the fact that we were possibly paying one or two officers from the wrong class under the present budget law.

"The offices in which he particularly called our attention to were the New Madrid County Farm Bureau, in which we appropriated the sum of \$1,500.00 for the year 1935, for the purpose of paying his secretary and general office expense. The other was for the New Madrid County Health Unit, for which we appropriated the sum of \$2,550.00, to be used as salary for the physician in charge and one stenographer. We gained the impression from him that these two appropriations should be made from class six.

"We would like to know if we should pay the above payments to the New Madrid County Farm Bureau, County Health Officer, Government Relief Office (postage and office supplies) and Probation Officer, (as appointed by the Circuit Judge) from the funds of Class 4, Salary & Operation, or should these non-elective officers be paid from some other fund?

"We understood from your assistant that non-elective officers were not entitled to pay from Salary & Operation. Would appreciate an early reply before we make up our budget for the year 1936."

I

It has been rather a difficult question to classify the County Farm Bureau Agent and his secretary, likewise, the County Nurse. In view of the fact that under Section 12616, Revised Statutes Missouri 1929, the County Court is authorized and empowered to appropriate, out of the general funds of the county, such sums as it may deem proper for the support of county farm organizations, we came to the conclusion that the Farm Bureau Agent was not a county officer in the sense as used in the statute relating to the officers, as contained in Class 4, page 341, and further, it appears by Section 12616 it is discretionary with the county court as to whether or not a farm bureau agent shall be employed or money for the support of county farm organizations shall be appropriated. Hence, the appropriation for County Farm Bureau Agent was placed in Class 6. A copy of an opinion to this effect this office rendered on April 16, 1935, to Honorable C. H. Robards, Presiding Judge of the County Court, Kennett, Missouri, is herewith inclosed.

II

Regarding the other officers which you have mentioned

in your letter and the question as to whether or not Class 4 includes non-elective officers, we shall discuss each case individually. Class 4 of the County Budget Act, page 341, Laws of Missouri 1933, 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."

Under Section 5, page 344, in the class of expenditures, Class 4 is as follows:

"Pay or salaries of officers and office expenses. List each office separately and the deputy hire separately."

In the case of County Health Officer it was formerly mandatory upon the county court to appoint such officer at the February term of the county court, as provided in Section 9025 Revised Statutes Missouri 1929. Upon the failure of the county court to appoint what the section designated as State Commissioner of Health, commonly known as county physician, the duty devolved upon the State Board of Health to make such appointment, the compensation and expenses of the county physician being paid out of the county treasury of the county.

The legislature amended said section in Laws of Missouri 1933, page 271, and now said section reads as follows:

"At the first regular February term of the county court in each county

of the State after this article becomes effective and at the regular February term of said county court every year thereafter, said court may appoint a reputable physician, as a Deputy State commissioner of health for a term of one year. In case of a vacancy in the office of the Deputy State Commissioner of Health of the county, the county court may at its next regular term of court appoint a reputable physician for the unexpired term. But the power of deciding whether or not such a deputy state health commissioner will be appointed shall be vested in the county court. If a county court of any county decides to appoint a deputy health commissioner, as empowered in this act, it shall agree with said commissioner as to the compensation and expenses to be paid for such services which amount shall be paid out of the county treasury of the county."

You will note that by the terms of the amended section the county court appears to have the power to use its own discretion in regard to the appointment of a county physician; hence, it would appear that the county physician would be in the same category of the appropriation made for the farm bureau and funds would be taken from Class 6. However, we are of the opinion that the county physician is a county officer, and, as the terms of the budget act placed the imperative duty, page 341, at the regular February term of the county court, to prepare and enter of record and file with the county treasurer and State Auditor a budget of the estimated receipts and expenditures for the year beginning January 1 and ending December 31, the appointment of the county physician is for one year, whereas, the appropriation for the county farm bureaus is for three years; hence the county court can fix the compensation of the county

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physician at the time it makes the appointment and at the time the budget is prepared for the fiscal year. Therefore, we are of the opinion that the class of officers mentioned in Class 4 includes the county physician, even though he be a non-elective officer. For your information, we have also construed Class 4 to include the salary of the county highway engineer.

With reference to the Government relief office (postage and office supplies), we are of the opinion such officer is not a county officer, either elective or non-elective, and hence, any appropriation of funds should come from Class 6.

With reference to the probation officer, under Section 14144, Revised Statutes Missouri 1929, it is the duty of the Circuit Judge of the Juvenile Court to appoint a probation officer to serve during the pleasure of the court.

In the case of *Hastings v. County* 314 Mo. 144, it was held that the probation officer was a county and public officer, hence, we are of the opinion that the salary of the probation officer should be included in the budget under Class 4, even though he be a non-elective officer. There has been considerable discussion as to whether or not Class 4 of the Budget Act refers solely to elective officers. But for the reason that Class 4 contains the provision "made payable out of the ordinary revenue of the county," we are of the opinion that said class may include non-elective officers as well as elective officers, the statutes governing the appointment and the manner in which said appointed officers are paid will determine, in most instances. Therefore, as to whether or not each appointive officer is to be placed in Class 4 or Class 6 will have to be determined by the incidents of the office.

Respectfully submitted,

OLLIVER W. NOLEN  
Assistant Attorney General

APPROVED:

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

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Inclosure