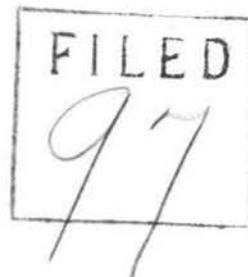


COUNTY BUDGET ACT: County Treasurer is liable on his bond under Sec. 8 of Act if warrants are paid out contrary to terms of Act, but is not liable if warrant is regular and he has no knowledge of fraud in connection therewith; City of third class may use excess funds without an election for the repairing of a sewer.

June 18, 1936.



Honorable Mark W. Wilson,
Prosecuting Attorney,
Henry County,
Clinton, Missouri.

Dear Sir:

This department is in receipt of your letter wherein you present two questions on which you desire an opinion, the first question being as follows:

"If a county court should illegally and improperly transfer moneys of the county belonging to one fund to another fund, and then should order issuance of warrants on the fund to which it had been illegally and improperly transferred, would there be any liability on the County Treasurer for issuing checks in payment of warrants so drawn? Or, so far as he is concerned, is he protected from any liability by the order made by the County Court?"

In 1933, the Legislature passed the County Budget Act (Laws of Mo. 1933, p. 340 et seq.) Under Section 2 thereof, it is the duty of the county court at the February Term, in counties of less than 50,000 inhabitants, to classify the proposed expenditures for the fiscal year into five classes, Class 6 being merely to take care of any excess funds which remain after the five other classes have been provided for. The primary duty of the county court and all officers in connection therewith is to sacredly preserve the priority of the classes.

We deem Sections 12167 and 12168, R.S. Mo. 1929 to still be in effect and not in conflict with the Budget Act; however, Section 12167 can only be followed at the close of the fiscal year or as it relates to a special fund which is no longer needed for the purpose for which it was raised.

You state in your letter "if a county court should illegally and improperly transfer moneys * * * belonging to one fund to another" - we assume this to be true, and can only refer you to Section 8 of the County Budget Act (Laws of Mo. 1933, p. 345, which provides in part as follows:

"* * * Any order of the county court of any county authorizing and/or directing the issuance of any warrant contrary to any provision of this act shall be void and of no binding force or effect; and any county clerk, county treasurer, or other officer, participating in the issuance or payment of any such warrant shall be liable therefor upon his official bond."

In view of the provisions of Section 8, supra, if the County Treasurer should participate in the payment of any warrant contrary to the provisions of the County Budget Act, he would be liable upon his official bond.

As to the treasurer of a municipality in a like situation, it is our opinion that he would not incur the same liability as there are no provisions in the statute in cities of the third class making the treasurer liable. Therefore, if the warrant is regular on its face and issued for a lawful purpose, we do not think the treasurer of a city would become liable on his bond.

Your second question is as follows:

"A city of 3rd class sold its light plant some 9 or 10 years ago, being authorized to make sale by result of an election held for that purpose. Thereafter, for many years the money was invested in bonds and the interest used for payment of city expenses.

"About a year ago a special election was held submitting the question of sale of a certain amount of such bonds, and a certain definite part of sum realized to be used for construction of sewage disposal plant and sewer work, and a certain definite part to be used in connection with certain W.P.A. projects when approved. Has the City Council authority, without any election being held, to transfer

a part of the funds voted for use on city park, to the fund to be used for sewer work?"

We assume that the election for the sale of the bonds mentioned in your letter was held in conformity with the provisions of Section 6834, R.S. Mo. 1929, which provides:

"The city council is hereby authorized and empowered to provide for the purchase of ground, and the erection of city halls, fire stations, assembly halls, memorial halls, convention halls, public library, hospital buildings, equipment and other buildings and the improvement thereof, and for the payment of the same, and also for all necessary work of improvement specified in this article, by the issue of bonds or otherwise, subject, however, to the conditions and limitations herein specified. No city shall be allowed to become indebted in any manner or for any purpose to any amount exceeding in any one year the income and revenue provided for such year, without the assent of two-thirds of the voters of such city, voting at an election to be held for that purpose, nor in any case requiring such assent shall any indebtedness, in the aggregate exceeding five per centum on the value of the taxable property therein, to be ascertained by the assessment next before the last assessment for state and county purposes, previous to the incurring of such indebtedness: Provided, that any city in incurring any indebtedness requiring the assent of the voters as aforesaid, shall, before or at the time of doing so, provide for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for payment of the principal thereof within twenty years from the date of contracting and incurring such indebtedness

and may provide by ordinance the manner of conducting said election under this section, and ascertaining the result of the same."

The situation in your case is rather peculiar in that it appears by the sale of the light plant you received the funds in the first instance. The statutes relating to the issuance of bonds contemplate that a city will not have the funds with which to erect improvements, but gives the city authority to hold elections in order to issue bonds for the purpose of raising funds. We are not able to find a statute governing cities of the third class, under which you probably held the election a year ago wherein the question of selling a portion of the bonds was submitted to the voters.

Under Section 6822, R.S. Mo. 1929, the Council has power to establish a general sewer system, said section being as follows:

"The council shall have power to cause a general sewer system to be established, which shall be composed of four classes of sewers, to-wit: Public, district, joint district and private sewers. Public sewers shall be established along the principal courses of drainage, at such points, to such extent, of such dimensions and under such regulations as may be provided by ordinance, and these may be extensions or branches of sewers already constructed or entirely new throughout, as may be deemed expedient. The council may levy a tax on all property made taxable for state purposes over the whole city, to pay for the constructing, reconstructing and repairing of such work, which tax shall be called 'special public sewer tax', and shall be such amount as may be required for the sewer provided by ordinance to be built; and the fund arising from said tax shall be appropriated solely to the constructing, reconstructing and repairing of said sewer."

From the above section you will note the Council has power to levy a tax on all property made taxable to pay for the construction, reconstruction and repairing of such work. It would appear that if the city already has funds available, by transferring a part of the funds which were originally voted for the improvement of the City Park, the same could be used for the sewer work, provided, however, that the funds which were voted for the improvement of the Park have been so used and the portion the city proposes to transfer is excess funds which remain after the proposed park project has been fully carried out.

You do not state in your letter the kind of sewer work or improvement that is proposed; hence, we cannot determine exactly which sections of the statute would be applicable.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General.

APPROVED:

ROY McKITTRICK,
Attorney General.

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