

COUNTY BUDGET LAW: Surplus revenue of a subsequent year may be applied to a deficit of a prior year, but surplus revenue of a prior year may not be applied to a subsequent year's obligations while obligations of a year prior to the year for which there is a surplus are outstanding.

July 2, 1937.

7-16



Honorable Sam A. Baker  
Ex Officio Treasurer  
Bollinger County  
Marble Hill, Missouri

Dear Sir:

This department is in receipt of your letter of June 8, 1937, in which you request an opinion as follows:

"In this county there are a lot of county warrants issued in the year 1931-32 and 1933, which have never been paid and which are outstanding. There is revenue coming in on the 1934-1935 back taxes on real estate, and there are no outstanding warrants or bills for these years. Has the county court the right to use this revenue incoming on the 1934-1935 delinquent taxes to pay off the old county warrants in order of their Registry?"

Enclosed is a copy of an opinion heretofore written by this department on January 29, 1935, to the Honorable Forrest Smith, State Auditor, in which it is concluded that:

"It is the opinion of this department that revenue of 1934 cannot be used to pay interest on warrants issued prior thereto, but if any surplus remains after all obligations have been taken care of, or if revenue is derived from delinquent taxes, the same may be applied on the interest of the protested warrants in question."

July 2, 1937

1  
In the case of Kansas City, Fort Scott & Memphis Railroad Company v. Thornton, 152 Mo. 570, which is referred to in the opinion hereto attached, the court said, l. c. 575:

"Under \* \* \* provisions of the Constitution warrants may be issued to the extent of the revenue provided for the year in which such warrants were issued and the warrants so issued each year must be paid out of the revenue provided and collected for that year. If the revenue collected for any year for any reason does not equal the revenue provided for that year and hence is not sufficient to meet the warrants issued for that year, the deficit thus caused can not be made good out of the revenue provided and collected for any other year until all the warrants drawn and debts contracted for such other year have been paid, or in other words only the surplus revenue collected for any one year can be applied to the deficit of any other year. Thus each year's revenue is made applicable, first, to the payment of the debts of that year, and secondly, if there is a surplus any year it may be applied on the debts of a previous year."

With reference to a part of your question as to whether the delinquent revenue of the years 1934 and 1935 may be applied to the payment of obligations incurred in 1936 and 1937, we direct your attention to that part of the preceding quotation which we have underlined. In State ex rel. Clark County v. Hackmann, 280 Mo. l. c. 697, the court, in speaking of how a

July 2, 1937

warrant was to be paid for which no funds were available from the revenue of the year in which it was issued, said:

"On the contrary, this court has often said in no uncertain terms that it (the warrant) was valid and payable out of any surplus revenue in the hands of the county treasurer that might arise in subsequent years."

This means, as we understand it, that each year's obligations must be paid from that year's revenue, but, if there is a deficit in that year, the surplus revenue of a subsequent year may be applied to the payment of the deficit.

In State ex rel National Bank of Rolla v. Johnson, 162 Missouri 621, the court had before it three questions. The first of which does not concern us here since we have heretofore concluded that the surplus revenue of a subsequent year may be applied to the payment of a deficit of a prior year.

The second question before the court at l.c. 628, was as follows:

" \* \* \* What is the lawful method of applying such payment? Must warrants be paid in the order of their presentation and registration, or are they payable pro rata to all the outstanding indebtedness."

The court in answer to this question said at l.c. 631:

"We conclude that this surplus, after the current expenses for the years \* \* \* had all been paid,

at once became subject to this general statute, Section 3166 Revised Statutes 1889, (now Section 12139 Revised Statutes 1929), which provides a just and equitable rule for the payment of the debts of the counties. The preferred right of payment according to registration is not taken away further than the changed condition wrought by the constitution requires, and when the constitution is read into and with this section, it merely changes the order of payment so that the funds provided for each year's expenses, is primarily the fund out of which warrants drawn for those expenses are to be paid according to their presentation and registration in that year, and when they are all paid and a surplus, as in this case, remains, then it is applicable to unpaid warrants of former years and Section 6771 Revised Statutes 1899, (now Section 12139 Revised Statutes 1929), provides the rule of priority just as it did before its modification by the constitution of 1875, and the surplus is not to be distributed pro rata."

The third question before the court was, as follows:

"If such surplus is so applicable and if payable in the order of their registration, is it the duty of the treasurer to so pay them, or must the county court first distribute the fund for the payment of such warrants before the treasurer can pay any of such warrants for past years' indebtedness?"

July 2, 1937

The court in answer to this question said at l.c. 633:

"It was not at all necessary for the county court to make any further appropriation of the fund before the treasurer could pay re-lator's warrant out of this surplus. The court is required to distribute the current tax into the different funds each year, and may, in proper cases, transfer moneys from one fund, when not needed, to another that is insufficient, but after all the warrants for any year have been paid there is no provision of law for distributing this surplus into different funds, but it is in the hands of the treasurer, as an executive officer, charged by the statute with the duty of disbursing the funds on warrants drawn by the county court; and as the warrants have been drawn, all he has to do is to pay them in the order of their registration whenever he had money enough to take up a warrant,"

#### CONCLUSION

Therefore, it is the opinion of this Department that the surplus revenue received from the delinquent taxes for the years 1934 and 1935 may be applied to the payment of obligations incurred in previous years that are still outstanding. That said surplus revenue from the years 1934 and 1935 can not be applied to the payment of obligations for years 1936 and 1937, while obligations for years prior to the years 1934 and 1935 are outstanding. That no order of the county court distributing said surplus fund pro rata to the various funds for the payment of said warrants is necessary, but that the county treasurer may pay the warrants in the order of their presentation and registry, whenever he has sufficient funds to do so.

Respectfully submitted,

AUBREY R. HAMMETT, Jr.  
Assistant Attorney General

APPROVED:

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