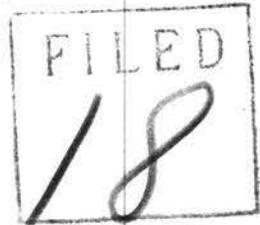


COUNTY BUDGET ACT: (1) Sections 1 and 2, Laws of 1937, page 422, are not repealed by Laws of 1939, p. 660;
(2) Counties of under 50000 can protest warrants and thus enable them to borrow money until taxes are collected.

February 12, 1940

Honorable J. Carrol Combs
Prosecuting Attorney
Barton County
Lamar, Missouri



Dear Sir:

This Department is in receipt of your letter of February 8th, wherein you make the following inquiry:

"Frankly, I am very confused concerning the budget laws under the Laws of 1939. At page 660 of the Laws of 1939 it provides in the repealing clause that Section 17 of the Laws of 1933 at page 340, as amended by the Laws of 1937 at pages 422 to 424, and 427 to 430, inclusive, are repealed. This, I assume means that Sections 2 and 5 of the laws have been repealed and are no longer in effect and that Section 17 of the Laws of 1939, at page 660, is now the only law applicable in this matter. If this be true, then I wish to inquire concerning the rights of our county court in the following instances.

"Our county, as of January 1, 1940, has on hand some \$15,000.00 in cash to begin the new budget year. Under the provisions of Section 17 at page 660 of the Laws of 1939, the county court is desirous of borrowing money from a local bank up to the 90% of the anticipated revenue for 1940,

to pay warrants as they are issued. They, however, wish to borrow this money only as needed from the bank and pay interest from the date of the borrowing of the same. Upon this theory, they would of course, use the money on hand to pay warrants as they are issued at the present time until it has been exhausted and then borrow from the bank the money as needed each month after the present supply of cash has been exhausted. They of course, will have an understanding with the local bank that this money shall be advanced at a specified rate of interest upon the execution and delivery of a warrant under the provisions of section 17, so that they may be sure that the money will be available at any time the county may desire the same.

"The questions I would like to determine are these: may Barton County, which is a county under 50,000 population, borrow money under the provisions of Section 17 of the Laws of 1933, at page 349, as amended by the Laws of 1939 at page 660, to pay warrants as they come due as above set out, notwithstanding the provision of Section 1 of the budget law, at page 340 of the Laws of 1933, as amended by the Laws of 1939, at page 657, which provides that counties under 50,000 shall be governed by the first eight sections of the act?

"If Section 17 does not apply to this county, an answer to that effect would answer all inquiries in this matter. However, if the county is authorized to borrow money under the provisions of Section 17, may this county use the money on hand to pay

warrants as they come due until it is exhausted and then borrow money as needed to pay warrants as issued in the future, notwithstanding the laws under the statutes as to the classification and payment of warrants, to the effect that all warrants of class 1 must be paid before class 2 warrants can be met, and 2 before 3, and so on?

"Also, I would like to have the opinion of your office as to the effect of Section 1 of the Laws of 1939, at page 660, which clearly states that the provisions of the "Laws of Missouri for 1937, found at page 422 to 424 (which are sections 2 and 5 of the original Act) both inclusive, be and the same is hereby repealed," as to whether or not this repeal section does actually repeal the provisions of Sections 2 and 5 of the original Act as amended by the Laws of 1937 at pages 422 to 424, as Section 1 would seem to indicate, and if said sections 2 and 5 are repealed, does that have the effect of doing away with the classification of expenditures in counties under 50,000?"

Your first question relates to the title of the amended Act of 1939, page 660. You contend that the title and the repealing section - Section 1 - which is almost identical with the title of the act itself, can be construed to repeal Sections 1 and 2 of the original act, being Laws of Missouri, 1933, page 340 et seq. The title to the Act of 1939 is as follows:

"AN ACT to amend an act of the 57th General Assembly designated as the County Budget Law, Laws of Missouri, 1933, page 340 as amended by acts of the 59th General Assembly, Laws of Missouri, 1937, found at pages 422

to 424, both inclusive and pages 427 to 430 both inclusive, by repealing Section 17 of said act and by enacting in lieu thereof a new Section to be known as Section 17 relating to the same subject matter and providing for the registration of certain warrants and giving them preference and priority in payment, and declaring this act to be a revision bill."

Section 17 of the original act, page 349, Laws of Missouri, 1933, refers to the powers of the county court to borrow money in counties of more than 50,000 inhabitants, because, by Section 1, page 340, it is expressly recited,

"shall be governed by Sections 1 to 8 inclusive, of this act."

Section 9, page 346, Laws of Missouri, 1933, states,

"* * * The budget officer shall receive no extra compensation for his duties under this Act, and Sections 9 to 20 inclusive of this Act shall apply to such Counties."

Reverting to the title above quoted, the gist and the essence of the same is to repeal Section 17 of the Laws of Missouri, 1933, and enact a new section in lieu thereof. The first part of the title refers to an amendment made by the Legislature in 1937 relating to Sections 1 and 2 of the Laws of 1933, and may be more or less treated as historical and surplusage. The title to the act, when it is analyzed and the surplusage excluded, repeals and reenacts Section 17, and nothing more. By merely referring to the action of the Legislature in amending Sections 1 and 2 of the Laws of 1933, we cannot interpret the title to repeal Sections 1 and 2.

In State ex rel. Consolidated District v. Miller, 33 S. W. (2d) 122, it was held that the mere reference to an act or a section by title of the amending act is sufficient without other description of the subject matter.

In the case of *Wilhite v. Rathburn*, 69 S. W. (2d) 708, it was held that the title of an act should be liberally construed to support power sought to be exercised by the Legislature. Other decisions which bear out our theory are, *Sherill v. Brantley*, 66 S. W. (2d) 529, and *Graves v. Purcell*, 85 S. W. (2d) 543.

In view of our interpretation as argued above, we are of the opinion that the act of the Legislature in 1937 in repealing and reenacting Sections 1 and 2 of the original Budget Act, is not repealed by the Act of 1939, page 660, and that said sections are in full force and effect and that Laws of Missouri, 1937, page 422, is now the valid and existing law relating to counties of less than 50,000 population. We are of the further opinion that Section 17, as repealed and reenacted by the Laws of Missouri, 1939, still relates solely to counties of more than 50,000 population, and, therefore, your county could not take advantage of the provisions of said section because it is less than 50,000 and still governed by the provisions of the original act - Sections 1 to 8, inclusive.

This conclusion also answers your question in the next to the last paragraph of your letter. However, since your letter contains full facts regarding the matter and the desire for your county to borrow money to meet the lawful expenditures of the county until the collection of taxes, we think, in reality, it involves the question of what is commonly referred to as "protested warrants." Therefore, having held above that Section 17 does not empower counties of the population of your county to borrow money, yet the question may be considered from another angle, that is, to the effect of whether or not the Budget Act in counties of less than 50,000 precludes counties from protesting warrants. This question was before this Department in an opinion rendered to Honorable Frank D. Sheible, County Treasurer, Hillsboro, Missouri, on August 19, 1936, and in view of the apparent splendid financial condition which the facts show that prevails in your county now, we are of the opinion that you may follow the enclosed opinion to Mr. Sheible and obtain the same object which you desire.

Respectfully submitted,

APPROVED:

OLLIVER W. NOLEN
Assistant Attorney-General

W. J. Burke
(Acting) Attorney-General