

COUNTY BUDGET ACT: Balance for printing financial statement and not budgeted can only be paid out of surplus or transferred from other classes. Amended Act of 1939, page 656, does not change the liability of the county clerk as budget officer on his bond. Also the same liability on the county clerks of counties of population over 50,000, under Section 20, Laws of 1933, page 340 et seq.

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Honorable Forrest Smith
State Auditor
Jefferson City, Missouri

Dear Mr. Smith:

On March 28th you wrote this Department and submitted a number of questions. The first part of your inquiry relates to a letter which you have received concerning the payment under the Budget Act for the publishing of the financial statement, and is as follows:

"The County Court and myself are having some trouble about paying for the publishing of the Financial Statement, the Courts budget for same was \$450.00 and the cost for publishing was \$693.00, and I have refused to write a warrant for only the \$450.00 which was all the Budget called for. Now please inform me how they can pay the balance of \$243.00. There will not be enough in Class Five to pay this at the close of the year, I want to stay on the safe side, but I want to do what is right."

The rulings of this Department have been to the effect that no warrant should be issued for items which are in excess of the amount budgeted under any of the five classes. The main objective of the Budget Act was to compel counties to maintain their expenses within the anticipated revenue. In counties of less than 50,000 inhabitants

there are five classes which the act compels all officers participating in the issuance of any warrant to sacredly preserve the priorities. The only manner by which the county official, referred to in the letter, can properly protect himself is the course which he has pursued, that is, honor a warrant for the amount which was contained in the budget. We have held that any surplus in any of the preceding classes may be transferred to Class 5, provided it does not in anywise jeopardize the items contained in any of the classes.

Another method by which payment might be made is, if there is at the close of the fiscal year any surplus funds from any of the classes such surplus may be used. If there does not remain any surplus at the close of the year it will be necessary to take this item into account for the ensuing year.

I

Part I of your request is as follows:

"Does the 1939 revision which makes the county clerk ex-officio 'Budget Officer,' place liability on his official bond for issuing warrants in excess of the approved estimates certified to the county treasurer and the State Auditor, in counties of less than 50,000 population?

"Is such liability established in counties of 50,000 but not in excess of 80,000 population?

"Apparently by provision of Sections 12161, R. S. Mo., 1929, and Section 21, of the 1939 Revision, the county clerk is ex-officio 'Accounting Officer' in all counties not having elected auditors or comptrollers. If liability is to be established,

under which of the various functions performed by the clerk is it to be charged? Please give your opinion on the above questions confining it generally to excess issuance of warrants over appropriations for classes or funds."

The County Budget Act was originally passed in 1933, Laws of Missouri, 1933, page 343 et seq. There was a minor amendment made in 1937, Laws of Missouri, 1937, page 422, with reference to transferring funds in Class 5. In 1939, Laws of Missouri, 1939, page 656, the Legislature repealed Sections 1, 9 and 21, and enacted new sections in lieu thereof. The only marked difference in the new section (Section 1) is the sentence, "The clerk of the county court of the several counties of this state shall be the budget officer of such county and as such shall prepare all data, estimates and other information * * *," whereas, formerly it was the duty of the clerk of the county court to prepare such data, estimates etc., without designating such officer as the budget officer of the county. And likewise, the present section (Section 1) states that Sections 1 to 8, inclusive, of the original act shall govern counties of 50,000 inhabitants or less.

Therefore, it is our conclusion that no change has been made in the liability of an officer participating or actually issuing warrants contrary to the Budget Act in counties of less than 50,000 population.

The question as to whether or not the budget officer comes within the provisions of the penalty section, which is the last paragraph of Section 8, Laws of Missouri, 1933, page 346, will next be discussed. Said paragraph is 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,

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participating in the issuance or payment of any such warrant shall be liable therefor upon his official bond."

Bearing in mind that the original act in counties of less than 50,000 contained no reference to a budget officer, and the penalty section states, "any county clerk," does the budget officer now come within the provisions of the penalty section? The new section (Section 1) states that the clerk of the county court shall be the budget officer, thereby making in effect the county clerk and the budget officer synonymous. By Section 4, Laws of Missouri, 1933, page 343, it has always been the duty of the county clerk to prepare certain data and in reality function as the budget officer. In our opinion the Legislature has simply conferred title and in another section given additional compensation to the county clerk for preparing data which he formerly prepared without compensation. But, we do not have to rely on the statement in the penalty paragraph of Section 8 to bring the budget officer within the purview of the section, as Section 8 states, "or other officer." This, in our opinion, is broad enough to include the county clerk, now designated as budget officer, and we accordingly hold that the county clerk as such budget officer is subject to the same penalty and liability as any other officer enumerated or mentioned in the penalty section.

We further hold that the county clerk as budget officer is not subject to the same penalties and liabilities under his official bond in counties of 50,000 but not in excess of 80,000 population. Such liability, if it exists, must be found in sections 9 to 21, inclusive, of the original act of 1933, and its amendments, if any, referring to him in the Laws of 1939, pages 656 to 658, inclusive.

We next refer to that portion of your letter which relates to Section 12161, R. S. Mo. 1929, and Section 21, Laws of Missouri, 1939, page 658, and you desire to know which section governs the liability of the county clerk.

Section 20, Laws of Missouri, 1933, page 351, refers to the liability of certain officers, especially to the accounting officers, and contains reference to "any officer" and "such other officers." Section 22, Laws of Missouri, 1933, page 351, states, "All laws or parts of laws and expressly sections 9874, 9985 and 9986 in so far as they conflict are hereby repealed."

From a cursory examination of the duties of the county clerk under the Budget Act, and under Section 12161, supra, which has been on our statute books many years, we fail to discern any conflict between the statutes with reference to the duties of the county clerk. In other words, it appears that he can carry out his duties under Section 12161 and his duties under the Budget Act. However, if a conflict arises or if liability for wrongful acts under the official bond or otherwise on the county clerk comes into question, we are of the opinion that his duties and liability as established under the Budget Act shall control, by virtue of the fact that Section 22, supra, repeals all conflicting laws, and being a later law naturally predominates and takes precedence over all other laws.

Therefore, in answer to your request that we give particular emphasis to the point of issuing excess warrants over the amount budgeted, we think the county clerk as accounting officer, or any other officer defined as "the accounting officer," is liable under Section 20, Laws of Missouri, 1933, page 351, for warrants drawn in excess of the amount appropriated.

II

Part II of your request is as follows:

"Sections 7 and 11, Laws of 1933, Page 345 -7, provides that each officer or department furnish an estimate which the county court or

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or budget office as the case may be, shall examine administratively as provided by the Act. Section 20, provides that an officer is individually liable on his bond for purchases made without authorization of the "Accounting Officer."

"Do the various revisions place liability on the county clerk and his bondsmen for warrants issued covering purchases made in excess of the budget estimates of any official or department?"

"Please give your opinion confining it generally to excess issuance of warrants over appropriations allotted by separate office or departments within the total appropriation by classes or funds. Please point out application as it affects counties of less than 50,000 population, over 50,000 but not in excess of 80,000, and showing against which of the various functions performed by the county clerk the liability, if existing, would be charged."

As we have heretofore pointed out in answering your other questions, Section 7 refers to counties of less than 50,000 population, and the liability for the wrongful acts of the county clerk is governed by the last paragraph of Section 8, while Section 11 now refers to counties of 50,000 to 80,000 population, wherein the county clerk is made the budget officer, and counties of more than 80,000, wherein the presiding judge is made the budget officer or the county clerk may be designated as budget officer by Sections 9 and 9d, Laws of Missouri, 1939, page 657. And as heretofore pointed out, the penalties for the wrongful acts of the county clerk in counties of greater population are established by Section 20.

Having heretofore held that Section 20 is broad enough to cover any change in the designation of the title of the office, which in this instance is the county clerk, we are of the opinion that the revisions of 1937 and 1939 have made no material changes in the duties and liabilities of the county clerk, and his bond containing the usual covenants to the effect that he shall faithfully perform all duties of his office and account for all moneys, his bondsmen would be liable for warrants issued covering purchases made in excess of the budget estimates of any official or department.

With reference to pointing out particular instances wherein liability might be established against the county clerk in counties of less than 50,000 population and over 50,000 population, we think the provisions of the various statutes would have to determine the situations as they might arise and would have to be passed on individually. In other words, if the county clerk failed, omitted, neglected or acted contrary in violation of or wrongfully carried out his duties under any section in any county, he might be liable under his official bond.

Respectfully submitted,

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APPROVED:

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