

COUNTY COURTS AND ARMORY APPROPRIATIONS:

COUNTY BUDGET LAW: County courts may make appropriations for armories provided such appropriations are not in violation of the provisions of the County Budget Act and are not in violation of the provisions of the constitution, and especially Section 12, Article 10, thereof.

October 25, 1941

Hon. Wilbur F. Daniels  
Prosecuting Attorney  
Fayette, Missouri



Dear Sir:

We are in receipt of your request for an official opinion under date of October 7, 1941, as follows:

"On Monday, June 17, 1940, in the matter of 'Contribution to Armory' the County Court of Howard County, Missouri, made the following order to-wit: 'in the matter of contribution to the building of an armory in the City of Fayette, it is ordered by the court that the sum of \$5000 and the same contributed for the said purpose provided that the city of Fayette contribute an equal amount. Said amount is to be paid one-half in the year 1940, and one-half in the year 1941.

Vote: Biswell - Yes Johnson - Yes Cuddy - No."

"The above order was made on the date aforesaid and the City of Fayette contributed \$5000 and thereby satisfied the proviso in the order but the County Court never did pay any sum nor was the Court ever called upon to do so until Monday, October 6, 1941. At this time the Court voted two to one not to contribute \$5000 and made an order accordingly.

"Now the question is, is the County Court liable for the payment of \$5000 by reason of the order made on Monday, June 17, 1940? The Treasury of the county is in such a condition at this time that warrants are being protested. However, this is merely seasonable activity and is due to the fact that the 1941 tax collections have not as yet come into the Treasury."

Section 7364 R. S. Mo. 1939 provides that:

"All cities, towns, villages and counties in this state are hereby given power and authority to build or acquire, by purchase, lease, gift or otherwise, suitable armories, drill halls and headquarters, and the land necessary therefore, for such organizations of the National Guard of Missouri as may be stationed or located therein, and to provide for the maintenance and repair of the same."

The power and authority given the county by the wording of the statute "to build or acquire" a suitable armory, drill hall and headquarters, and the land necessary therefor, contemplates that the county in order to comply with the statute is in some manner to build or acquire the armory and the site itself or together with the City of Fayette for the purpose stated and take title thereto itself or together with the City of Fayette. Assuming that this method is being followed in the establishment of the armory with the building to be under a county control--and that the appropriation of the county court is not a bare contribution or donation to an institution, corporation, association, company or individual for the purpose of building and establishing an armory which would be violative of Section 6 of Article IX and Section 46 and 47 of Article IV of the Missouri Constitution--then by the above statute, Section 7364, the Legislature made it lawful for the county court to appropriate funds to build an armory in the county, where an organization of the National Guard of Missouri is stationed or located.

Section 6 of Article IX of the Missouri Constitution provides as follows:

Sec. 6. Municipalities not to subscribe to capital stock nor aid corporations or institutions. -- No county, township, city or other municipality shall hereafter become a subscriber to the capital stock of any railroad or other corporation or association, or make appropriation or donation, or loan its credit to or in aid of any such corporation or association, or to or in aid of any college or institution of learning or other institution, whether created for or to be controlled by the State or others. All authority heretofore conferred for any of the purposes aforesaid by the General Assembly, or by the charter of any corporation.

is hereby repealed: Provided, however, that nothing in this Constitution contained shall affect the right of any such municipality to make such subscription where the same has been authorized under existing laws by a vote of the people of such municipality prior to its adoption, or to prevent the issue of renewal bonds, or the use of such other means as are or may be prescribed by law for the liquidation or payment of such subscription, or of any existing indebtedness."

Section 47 of Article IV of the Missouri Constitution provides as follows:

"Sec. 47. Municipalities not to lend credit or grant public money \* \* \*. The General Assembly shall have no power to authorize any county, city, town or township or other political corporation or subdivision of the state now existing, or that may be hereafter established, to lend its credit, or to grant public money or thing of value in aid of or to any individual, association or corporation whatsoever, or to become a stockholder in such corporation, association or company. \* \* \*"

Section 46 of Article IV of the Missouri Constitution provides as follows:

"Sec. 46. Public money, grant of prohibited.-- The General Assembly shall have no power to make any grant, or to authorize the making of any grant of public money or thing of value to any individual, association of individuals, municipal or other corporation whatsoever: Provided, That this shall not be so construed as to prevent the grant of aid in a case of public calamity."

The above constitutional provisions prohibit an appropriation or donation, grant of public money or loan in aid of any corporation or association, individual, company or institution of a private nature. The test of the constitutionality

of a statute such as Section 7364, supra, is whether or not the appropriation authorized is for a recognized public purpose. Under the Supreme Court decisions, these provisions of the Constitution are inapplicable to Section 7364 as the appropriation is for an authorized public purpose as now recognized by law. In the case of Jasper County Farm Bureau v. Jasper County, 315 Mo. 560, 286 S. W. 381, the Supreme Court held that an appropriation of the County Court for the use of the Jasper County Farm Bureau was lawful and the statute authorizing the appropriation therefor out of general county funds was constitutional and not violative of Section 6 of Article IX or Section 46, 47 of Article IV of the Missouri Constitution. See also State ex rel Zoological Board of Control v. City of St. Louis, 318 Mo. 910, 1 S. W. (2d) 1021; State ex rel Jones v. Chariton Drainage District No. 1, 252 Mo. 345, 158 S. W. 633.

The appropriation made by the County Court of Howard County for an armory building for a stated public purpose and the statute authorizing same is not in violation of the Missouri Constitution. The Missouri courts uniformly hold that statutes of this kind providing for the construction or acquisition of buildings, structures and improvements of a public nature by counties and cities are lawful and not inconsistent with the provisions of the Missouri Constitution. See Halbruegger v. City of St. Louis, 302 Mo. 573, 262 S. W. 379. This case also cites the rulings in other states relative to the erection of public buildings out of public funds, if the buildings in question serve or may serve a public use, as now recognized by law, within the Constitution. See State ex rel City of Boonville v. Hackmann, 293 Mo. 313, 240 S. W. 135; State ex rel Excelsior Springs v. Smith, 366 Mo. 1104, 82 S. W. (2d) 37; Laret Investment Co. v. Dickmann, 135 S. W. (2d) 65, Haussler v. St. Louis, 205 Mo. 656, 103 S. W. 1034; State ex rel Russell et al v. State Highway Commission, 328 Mo. 942, 42 S. W. (2d) 196.

The County Court of Howard County is authorized under the statute and the Missouri decisions to appropriate funds toward the building of the armory even though it does not furnish all the necessary funds or the land required therefor, if there is a county control to be had over the property.

The rule that county courts have only such authority as is expressly granted to them by Statute is qualified by the rule that the express grant of powers carries with it such implied powers as are necessary to carry out or make effective the purposes of the authority expressly granted. Sheidley v. Lynch, 95 Mo. 487; Walker v. Linn County, 72 Mo. 650; King v. Maries County, 297 Mo. 488, 249 S. W. 418; State ex rel Wahl v. Speer, 223 S. W. 655.

County courts act and speak through their records only. *Dennison v. St. Louis*, 33 Mo. 168; *Thompson v. City of Malden*, 118 S. W. (2d) 1059; *Decker v. Deimer*, 129 S. W. 936.

The County Court of Howard County by its order of record, by a two to one vote, on Monday, June 17, 1940, duly appropriated \$5000 from the general revenue fund of the county for the building of an armory in the City of Fayette. The county court order contained the proviso that the City of Fayette should contribute or appropriate an equal amount and the proviso having been complied with and the City of Fayette having appropriated and paid its \$5000, then the County Court of Howard County should pay the \$5000 for the county out of general county funds in accordance with its court order made and entered of record on June 17, 1940, if such appropriation did not violate the provisions of the County Budget Act or the Constitution of Missouri.

The fact that the County Court of Howard County now votes two to one not to appropriate the money and makes its order of record not to contribute or pay the \$5000 for the armory does not rescind the court order and appropriation previously made for a lawful purpose and in our opinion the county should pay and is liable for the \$5000 as an appropriation lawfully made for said authorized public purpose on June 17, 1940, if such appropriation did not violate the provisions of the County Budget Act or the Constitution of Missouri.

It was held in the following Missouri decisions that orders of a county court duly made and entered of record have the effect of a judgment and that final orders of the county court cannot be set aside at a subsequent term by the county court or on the ground of error. *Peake v. Redd*, 14 Mo. 79; *Aslin v. Stoddard County*, 341 Mo. 138, 106 S. W. (2d) 472; *Mead v. Jasper County*, 305 Mo. 476, 266 S. W. 467; *State ex rel St. Joseph and I. R. Company v. Sullivan County Court*, 51 Mo. 522.

We have considered this question only from the standpoint that the county court may make appropriations for armories and the effect of the order made in 1940. It must also be considered from the standpoint of whether or not it violates the County Budget Act, or any provisions of the Constitution. In other words, if the appropriation made in 1940 for the armory was in excess of the anticipated revenue for that year, and in excess of the estimated Budget for that year, then under the County Budget Act, it was void. Article

2, Chapter 73, R. S. Mo. 1939, provides for the County Budget Act. Under the provisions of this act it would be unlawful for any county officer to issue or pay warrants under the foregoing circumstances. Section 10917 of said act 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 law 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 the case of Missouri-Kansas Chemical Corporation v. New Madrid County, 345 Mo. 1167, the court had before it a bill against the county court for the payment of supplies purchased by the sheriff. It was contended that the contract by the sheriff for purchase of supplies would violate the Budget Act because it was in excess of the budget allowance. In discussing the Budget Act, its purposes, etc., the court said: (l. c. 1168 (1))

"(1) But in 1933 the General Assembly enacted the 'county budget law' (Laws 1933, pp. 340 et seq.), which provides for an annual budget presenting a complete financial plan for the ensuing year. We refer to some, not necessarily all, of its provisions influencing our conclusions. Section 1 makes Secs. 1 to 3 inclusive, thereof applicable to counties having 50,000 inhabitants or less and requires the preparation of an annual budget of estimated receipts and expenditures by the respective county courts. Section 2 provides a classification for proposed expenditures. Section 3 makes it the duty of every officer claiming any payment for supplies to 'submit an itemized statement of the supplies he will require for his office.' Section 4 requires the county court to balance its estimated budget. Section 5 requires the county court to show the estimated expenditures by specified classes. Sections 6 and 7 require officers expecting to receive supplies to be paid for from county funds to submit certain specified information, estimates, etc., including the separate listing of each item of supplies. Section 8 requires the county court to go over, revise and amend the estimates to promote efficiency and economy, the public

interest and balance the budget; requires the recording and filing of certified copies of the revised estimate, and also provides: 'Any order of the county court of any warrant contrary to any provision of this act shall be void and of no binding force or effect . . . ' Section 9 provides that Secs. 9 to 20, inclusive, apply to counties having more than 50,000 inhabitants. Section 22 repeals all laws or parts of law insofar as they conflict with the county budget law.

"New Madrid county has less than 50,000 inhabitants. It is admitted of record that the budget of New Madrid county for 1934 and 1935 and 1936 for the purchase of disinfectant, etc., for the county jail, with the exception of the \$200 paid on account, had been exhausted at the time the several respective purchases here involved were made and that the balance sued for consists of items purchased in excess of the budget allowances therefor in the respective years. Plaintiff's representative testified he had been informed the budget 'was low', and, as we read the record, some statements were dated as of the year following the actual delivery of the supplies. On the record made any order of the county court seeking to effect the payment of the balance due, under the quoted provision of Sec. 8, supra, would be void and of no binding force and effect. Now, absent exceptional circumstances, a sheriff's authority to obligate his county is restricted to his budget allowances. The directed verdict for the county was proper. Consult Traub v. Buchanan County, 341 Mo. 727, 731 (3), 108 S. W. (2d) 340, 342 (3); Carter-Waters Corp. v. Buchanan County (Mo.), 129 S. W. (2d) 914 (2)."

We do not have before us the amount of levee as fixed by your court for county revenue purposes, but suggest here that if the contract and appropriation provided for in the order exceeded the constitutional limitations provided in Section 12, Article X of the Constitution, it would be void for that reason. In other words, the county court is not authorized under that section of the Constitution to issue warrants in excess of its revenue for the year in which the warrant is issued.

Said Section 12 of Article X of the Constitution provides in part as follows:

"No county, city, town, township, school district or other political corporation or subdivision of the State shall be allowed to become indebted in any manner or for any purpose to an amount exceeding in any year the income and revenue provided for such year, without the consent of two-thirds of the voters thereof voting on such proposition, at an election to be held for that purpose; nor in case requiring such assent shall any indebtedness be allowed to be incurred to an amount including existing 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, except that cities having a population of seventy-five thousand inhabitants or more may, with the assent of two-thirds of the voters thereof voting on such proposition at an election to be held for that purpose, incur an indebtedness not exceeding ten 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; \* \* \* \* \* ."

This provision was construed and discussed in the case of Trask v. Livingston County, 210 Mo. 583, 592, wherein the court said (l. c. 592):

"The constitutional provision found in section 12 of article 10 of that instrument has often been construed by this court. In Book v. Earl, 87 Mo. l. c. 252, it was well said: 'The evident purpose of the framers of the constitution and the people who adopted it was to abolish, in the administration

of county and municipal government, the credit system and establish the cash system by limiting the amount of tax which might be imposed by a county for county purposes, and limiting the expenditures in any given year to the amount of revenue which such tax would bring into the treasury for that year. Section 12, supra, is clear and explicit on this point. Under this section the county court might anticipate the revenue collected and to be collected, for any given year, and contract debts for ordinary current expenses, which would be binding on the county to the extent of the revenue provided for that year, but not in excess of it."

And at l. c. 594 and 595:

"\* \* \* The language of the Constitution is 'No county . . . shall be allowed to become indebted in any manner or for any purpose to an amount exceeding any year the income and revenue provided for such year.' It has been uniformly construed that this provision of the Constitution permits the anticipation of the current revenues to the extent of the year's income in which the debt is contracted or created and prohibits the anticipation of the revenues of any future year. \* \* \* \* \*"

Your letter indicates that the county court intended to pay one-half of this appropriation in 1940 and one-half in 1941. Under the rule announced in the Trask case, supra, you can readily see that the appropriation for 1941 would be in violation of the foregoing Section 12, Article X of the Constitution, because it was made in anticipation of revenues of a future year. As to the appropriation for 1940, if this item was estimated in the budget for 1940, and there were sufficient funds out of the revenue for that year, in the class from which it would be paid, then the county court would be authorized to order a warrant drawn thereon and the treasurer would be authorized to pay the same. However, if the revenue for 1940 was not sufficient to pay this amount

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and if it was not considered in the budget for 1940, the order of the county court of June 17, 1940, would be void.

CONCLUSION

From the foregoing, it is the opinion of this department that the county court order of June 17, 1940, appropriating money for an armory at the City of Fayette, Missouri, would be void as to that part of the appropriation which was to be paid out of the 1941 revenue, because it violated said Section 12 of Article X of the Constitution of Missouri.

We are further of the opinion that the part of the order providing for payment out of the 1940 revenue would be legal if this item was considered by the county court when making up its budget for 1940, and if it was in the class of funds from which it was to be paid, a sum sufficient to pay same, or if a sum sufficient to pay same could be anticipated out of the revenue for the year 1940.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

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VANE C. THURLO  
(Acting) Attorney General

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