

COUNTY TREASURER:  
ISSUANCE OF PROTESTED  
WARRANTS FOR COUNTY  
LIBRARY EXPENDITURES:

County treasurer may not protest warrants for county library in cases where the revenue for payment of warrants is not collected in the year of the issuance of such warrants.

June 11, 1942

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Hon. Robert P. C. Wilson III  
Prosecuting Attorney  
Platte County  
Platte City, Missouri



Dear Sir:

This is in reply to your letter of recent date, wherein you request an opinion on the following statement of facts:

"Our county library system has been voted. It was voted on at the regular school election the first Tuesday in April. The county court has appointed the members of the board -- three members in addition to the County Superintendent of Schools. One half mill was voted at the election. It is now being extended on the county tax books. Our county treasurer would like to know whether he should protest warrants on the anticipated revenue immediately, or whether he must wait until the actual cash is in his hands, which would be around the middle of January, 1943. Inasmuch as the board wants to start operations now, this question is a very important one to him. I can find no law on the problem, and respectfully request the written opinion of the Attorney General's Office."

In answer to your request, we call attention to Section 12, Article 10 of the Constitution, which provides in part as follows:

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"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; \* \* \* \* \*."

From your letter, you indicate that the tax moneys available for the payment of obligations incurred under the County Library Act, will not be available until the end of the current year. The income and revenue provided for this year, under this section, is the only income to which you may look for the purpose of paying obligations incurred in this year.

On the question of issuance of protested warrants, I am enclosing a copy of an opinion dated March 1, 1939, to Hulen & Walden, Moberly, Missouri. While this opinion does not directly pertain to your question, it does treat on the subject of issuance of protested warrants.

In the case of Brooks v. Schultz 178 Mo. 222, the court held that the library tax is subject to the Constitutional limitations. We think the same rule would apply to the issuance of warrants to pay library obligations as would apply to the payment of other county obligations. We further call your attention to Section 13858 R.S. Mo., 1939, which we think would apply here. This section provides in part as follows:

"It shall be the duty of the county treasurer, upon presentation to him of any warrant drawn by the proper authority, if there shall be money enough in the depository belonging to the fund upon which said warrant is drawn and out of which said the same is payable, to draw his

check as county treasurer upon a county depository in favor of the legal holder of said warrant, and to take up said warrant and charge the same to the fund upon which it is drawn; but no county treasurer shall draw any check upon the funds in any depository unless there is sufficient money belonging to said fund upon which said warrant is drawn to pay the same, and no money belonging to said county shall be paid by any depository except upon checks of the county treasurer. \* \* \* \* \*

This section pertains to the duties of the treasurer in issuing his check in payment of warrants drawn by the county court but does not pertain to his duties relating to the protesting of warrants. Section 13833 R. S. Mo., 1939, seems to contemplate that the county court may issue warrants when funds are not in the treasury to pay same but will be available out of the revenue collected and to be collected during the year of the incurring of the obligations for which such warrants are issued.

This section is as follows:

"No county treasurer in this state shall pay any warrant drawn on him unless such warrant be presented for payment by the person in whose favor it is drawn or by his assignee, executor or administrator; and when presented for payment, if there be no money in the treasury for that purpose, the treasurer shall so certify on the back of the warrant, and shall date and subscribe the same."

It seems by the provisions of this section, that it is the duty of the county treasurer to protest warrants when money is not available to pay them.

In speaking of the construction to be given Section 12 of Article 10 of the Constitution and particularly that portion of the section which pertains to the indebtedness which a county may incur, the Supreme Court in the case of Trask v.

Livingston County 210 Mo. 582, quoted from other Missouri decisions as follows, l.c. 594:

"In Mountain Grove Bank v. Douglas County, 146 Mo. 42, \* \* \* \* \*. 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. \* \* \* \* \*"

Also in the Trask case supra, the following is quoted at l. c. 592:

"\* \* \* In Book v. Earl, 87 Mo. l.c. 252, it was well said: '\* \* \* 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.' \* \* \* \* \*"

It will be noted from the quotation in the Earl case, supra, that the court said that a county court might anticipate the revenue collected and to be collected for any given year and contract debts of ordinary current expenses.

Applying this rule here, to your question and to our statutes, we know that all taxes, real and personal, are due on the first day of October and become delinquent on January 1st, thereafter. Taxes levied by the county court this year are payable on October 1st, of this year and we all know that revenue is collected from such taxes during the current year. That being the case, it would appear that warrants in anticipation of such revenue may be issued by the county court and protested by the treasurer before the revenue actually comes in.

Hon. Robert P. C. Wilson III

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CONCLUSION

From the foregoing, it is the opinion of this Department, that the county court may anticipate the revenue collected and to be collected for library purposes and issue warrants in payment therefor.

Respectfully submitted

TYRE W. BURTON  
Assistant Attorney General

APPROVED:

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ROY MCKITTRICK  
Attorney General

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