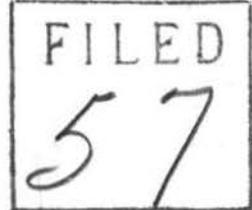


PROBATE JUDGES :
SALARY :
COUNTY BUDGET :

Probate Judge's Salary may be paid
out of current Budget if there is a
surplus, otherwise out of the 1944
revenue.

October 7, 1943



W. Smith

Honorable Joseph V. Massey
Judge of the Probate Court
Van Buren, Missouri

Dear Sir:

This is in reply to yours of recent date wherein you inquire as to the payment of the salary of Probate Judges under Senate Bill #4, of the 62nd General Assembly, and especially the duty of the County Court in reference to such payment under the County Budget Act.

In your request you state that there has been no provision for the payment of this salary under the current Budget.

The Act goes into effect on November 22, 1943, so the salary from November 22, to December 31, 1943, is included.

Section 13404a of said Senate Bill # 4, provides for the payment of the annual salary of the Probate Judge in equal monthly instalments and requires the fees of the office to be turned into the County Treasury at the end of the month in which they are collected.

The question here is similar to the question which was before the Supreme Court in the case of Gill v. Buchanan County, 346 Mo. 599. In that case the salary involved was that of a Judge of the County Court. The action for the back salary claimed due was brought long after the year in which the obligation for the salary accrued.

The court held under the facts in that case that the provisions of the constitution, Sec. 12, Art. 10, would not be violated in paying this back salary. At l. c. 605, the court said:

"*** However, our conclusion is that a county's liability for a county officer's salary is incurred not just when each monthly installment thereof is payable, but, insofar as the constitutional provision herein invoked is concerned, the whole amount, due and payable during each year, must be con-

sidered from the beginning of the year. This must be true because the annual amount of such salary is fixed by the Legislature and no other officer or officers have authority to change it, either before or after it is due and payable. (Nodaway County v. Kidder, 344 Mo. 795, 129 S. W. (2d) 857; State ex rel, Rothrum v. Darby, 345 Mo. 1002, 137 S. W. (2d) 532.) Certainly such annual obligations imposed upon the county by the Legislature would be valid from the first of the year, if within the limits of the constitutional provisions fixing the county's authority to raise revenue during each year to pay them; and no part of any such obligation could become invalid merely because the county court decided to incur other obligations for different purposes during the year.***"

Then the Court in referring to the Budget Act as it applied to the question there said:

"***Defendant also contends that plaintiff is not entitled to recover because there was not a sufficient amount provided in the 1934 county budget for county court salaries, to pay salaries of \$4500.00 each. (Only \$840 more than the total of salaries figured at \$3000.00 each was included in the salary fund for the county court.) However, as hereinabove noted, salaries of county judges are fixed by the Legislature and the Constitution prevents even the Legislature from changing them during the terms for which they were elected. Surely, the County Court cannot change them, by either inadvertently or intentionally providing greater or less amounts in the salary fund in the budget. The action of the Legislature in fixing salaries of county officers is in effect a direction to the county court to include the necessary amounts in the budget. Such statutes are not in conflict with the County Budget law but must be read and considered with it in construing it. They amount to a mandate to the county court to budget such amounts. Surely no mere failure to recognize in the budget this annual obligation of the county to pay such sal-

aries could set aside this legislative mandate and prevent the creation of this obligation imposed by proper authority. Certainly such obligations imposed by the Legislature were intended to have priority over other items as to which the county court had discretion to determine whether or not obligations concerning them should be incurred. They must be considered to be in the budget every year because the Legislature has put them in and only the Legislature can take them out or take out any part of these amounts. This court has held that the purpose of the County Budget Law was "to compel county courts to comply with the constitutional provision, Section 12, Article 10" by providing "ways and means for a county to record the obligations incurred and thereby enable it to keep the expenditures within the income." (Traub v. Buchanan County, 341 Mo. 727, 108 S. W. (2d) 340.) To properly accomplish that purpose, mandatory obligations imposed by the Legislature and other essential charges should be first budgeted, and then any balance may be appropriated for other purposes as to which there is discretionary power. Failure to budget funds for the full amount of salaries due officers of the county, under the applicable law, which the county court must obey, cannot bar the right to be paid the balance. Instead, it must be the discretionary obligations incurred for other purposes which are invalid, rather than the mandatory obligation imposed by the same authority which imposed the budget requirements. We, therefore, hold that a county court's failure to budget the proper amounts necessary to pay in full all county officer's salaries fixed by the Legislature, does not affect the county's obligation to pay them.***"

By the same reasoning the County Court would be authorized to pay this salary out of next year's budget if there is not a sufficient balance in classes 4, 5, or 6 of the Budget.

Oct. 7, 1943

This salary item could be classed as an emergency item and be paid under Class 5 of the Budget Act if funds are available in that class. If funds are not available in any class, then as stated under the Buchanan County case, supra, this salary could be set up and paid out under the 1944 Budget.

C O N C L U S I O N

From the foregoing it is the opinion of this department that the claim for the probate judge's salary is a valid and enforceable demand; that if there is a surplus in the anticipated revenue for the year 1943, over and above all necessary charges, a warrant for such unpaid salary may be issued payable out of Class 4, 5 or 6, if such surplus exists in either of such classes, or unclaimed balances in Classes 1, 2, 3, and 4, may be transferred to Class 5 to pay same.

Respectfully submitted

TYRE W. BURTON
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

TWB:LeC