

CONSTITUTION:)
ROADS AND BRIDGES:) Five questions regarding issuance of warrants in anticipation of revenue under Article X, Section 12(a), Constitution of 1945; setting up of the budget of counties in same respect; classification of expenditures under Sections 10911 and 10914, Laws of Mo., 1941; not necessary to revise budget after July 1, 1946.

May 23, 1946



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Honorable Joe W. Collins
Prosecuting Attorney
Cedar County
Stockton, Missouri

Dear Sir:

We hereby acknowledge receipt of your request for an opinion which reads as follows:

"Section 12(a) of Article X of the new Constitution entitled ADDITIONAL TAX RATES FOR COUNTY ROADS AND BRIDGES-- Road Districts, among other things, provides that the County Court may levy an additional tax not exceeding 35¢ on the \$100 assessed valuation, all of such tax to be collected and turned in to the county treasury to be used for road and bridge purposes.

"1. May the County Court draw warrants in anticipation of this revenue and

"2. Should the County Court set up in its Budget the amount anticipated from this source of revenue, and if so

"3. Should it be under class 3 of Section 10911 Laws 1941 page 650, and

"4. be under class 3 of expenditures set up in Section 10914 Laws 1941, page 652.

"When the New Constitution takes effect will the County Court then have to revise its Budget."

Article X, Section 12(a) of the Constitution of Missouri, 1945, referred to in your request, is as follows:

"In addition to the rates authorized in section 11 for county purposes, the county court in the several counties not under township organization, the township board of directors in the counties under township organization, and the proper administrative body in counties adopting an alternative form of government, may levy an additional tax, not exceeding thirty-five cents on each hundred dollars assessed valuation, all of such tax to be collected and turned in to the county treasury to be used for road and bridge purposes. In addition to the above levy for road and bridge purposes, it shall be the duty of the county court, when so authorized by a majority of the qualified electors of any road district, general or special, voting thereon at an election held for such purpose, to make an additional levy of not to exceed thirty-five cents on the hundred dollars assessed valuation on all taxable real and tangible personal property within such district, to be collected in the same manner as state and county taxes, and placed to the credit of the road district authorizing such levy, such election to be called and held in the manner provided by law."

This opinion deals only with the additional tax provided for in the first sentence of this section.

Pursuant to Article X, Section 12(a), supra, the Legislature has enacted House Bill 784, which was signed by the Governor on April 10, 1946, and will not become effective before July 1, 1946. Section 8527 therein provides:

"In addition to other levies authorized by law, the county court in counties not adopting an alternative form of government

and the proper administrative body in counties adopting an alternative form of government, in their discretion may levy an additional tax, not exceeding thirty-five cents on each one hundred dollars assessed valuation, all of such tax to be collected and turned into the county treasury, where it shall be known and designated as 'The Special Road and Bridge Fund' to be used for road and bridge purposes and for no other purpose whatever; provided, however, that all that part or portion of said tax which shall arise from and be collected and paid upon any property lying and being within any special road district shall be paid into the county treasury and four-fifths of such part or portion of said tax so arising from and collected and paid upon any property lying and being within any such special road district shall be placed to the credit of such special road district from which it arose and shall be paid out to such special road district upon warrants of the county court, in favor of the commissioners or treasurer of the district as the case may be; Provided further, that the part of said special road and bridge tax arising from and paid upon property not situated in any special road district and the one-fifth part retained in the county treasury may, in the discretion of the county court, be used in improving or repairing any street in any incorporated city or village in the county, if said street shall form a part of a continuous highway of said county leading through such city or village."

It is a general rule of law that a county may contract indebtedness in any year not to exceed the anticipated revenue for that year. The case of State ex rel. Clark County v. Hackmann, 280 Mo. 686, 218 S. W. 318, 1. c. 319, holds:

"* * * The counties of the state, in anticipation of their yearly revenue, issue warrants against such revenue.

The county authorities know from the assessed values and the tax rates just what revenue should come in for the year. They often issue warrants up to the very limit of the anticipated revenue, and these warrants we have held to be valid obligations of the county. This on the theory that the warrants represent valid contracts made during the year. * * *"

In support of this contention the case of *Thomas v. Buchanan County*, 51 S. W. (2d) 95, 1. c. 99, holds:

"The other contention presented by respondents is that the act gives the county court 'an unrestrained license' to issue anticipation notes 'regardless of necessity.' In other words, the county court can issue notes and borrow money before there is any indebtedness to be paid with it. It is said this would make the county a borrower, put it on a credit basis, and take it away from the cash system, contrary to the intent and purpose of section 12, article 10, of the Constitution, as interpreted in earlier cases. We see nothing in this section forbidding the enactment of state laws authorizing counties to borrow money so long as the indebtedness does not exceed the constitutional limit. Cases which say sections 11 and 12 of article 10 of the Constitution put the counties of the state on a cash basis mean merely that the indebtedness contracted in any year shall not exceed the anticipated revenue for that year. *State ex rel. Clark County v. Hackmann*, 280 No. 686, 698, 218 S. W. 318, 320."

Section 2 of the Schedule of the Constitution of Missouri, 1945, provides that:

"All laws in force at the time of the adoption of this Constitution and consistent therewith shall remain in full

force and effect until amended or repealed by the general assembly. All laws inconsistent with this Constitution, unless sooner repealed or amended to conform with this Constitution, shall remain in full force and effect until July 1, 1946."

Bearing this last section in mind, Section 8527, R. S. Mo. 1939, is in effect until July 1, 1946. Under that section the special tax for road and bridge purposes could not exceed twenty-five cents per one hundred dollars valuation. House Bill 784 repealed Section 8527, R. S. Mo. 1939, and enacted in lieu thereof Section 8527 of that House Bill. Since House Bill 784 is ineffective until July 1, 1946, Section 8527, R. S. Mo. 1939, is at the present time controlling. However, House Bill 784 has potential existence since it may become operative July 1, 1946. The case of State ex rel. Otto v. Kansas City, 310 Mo. 542, 276 S. W. 389, 1. c. 395, holds:

"It is familiar law that a statute or a constitutional provision may have potential existence, though it will not go into operation until a future time. State ex rel. v. Dirckx, 211 Mo. 568, loc. cit. 578, 111 S. W. 1; Poindexter v. Pettis County, 295 Mo. 629, 246 S. W. 38, loc. cit. 40; State ex rel. Brunjes v. Bockelman (Mo. Sup.) 240 S. W. 209, loc. cit. 211. * * *"

The levy date for county taxes has been fixed by House Bill 468 which was signed by the Governor on April 6, 1946, with an emergency clause. Section 11044, of House Bill 468, provides:

"After the assessor's book of each county, except in the City of St. Louis, shall be corrected and adjusted according to law, but not later than September 1, of each year, the county court shall ascertain the sum necessary to be raised for county purposes, and fix the rate of taxes on the several subjects of taxation so as to raise the required sum, and the same to be entered in proper columns in the tax book."

Since the levy is to be made on September 1st for the entire fiscal year and at that time Article X, Section 12(a), Constitution of Missouri, 1945, and also Section 8527, House Bill 784, should be in operation, the additional tax rates for county roads and bridges, provided by them, may be properly anticipated as revenue. Therefore, in answer to question one of your request, the county court may draw warrants in anticipation of revenue to be derived under these provisions.

Turning to question two, Section 8528 of House Bill 784, provides:

"The funds provided for in the preceding section shall be shown as a separate item on all of the financial, budget and other accounting statements of the county, and such fund shall be specifically and expressly shown and designated on all such as the 'Special Road and Bridge Fund' of such county."

Therefore, the county court should set up in its budget the amount anticipated from this source of revenue.

Class 3 under Section 10911, Laws of Missouri, 1941, page 650, is as follows:

"The county court shall next set aside and apportion the amount required, if any, for the upkeep, repair or construction of bridges and roads on other than state highways (and not in any special road district). The funds set aside and apportioned in this class shall be made from the anticipated revenue to be derived from the levies made under Sections 8526 and 8527 R. S. Mo. 1939. This shall constitute the third obligation of the county."

We have hereinbefore discussed that Section 8527, R. S. Mo. 1939, is the section repealed by House Bill 784 and in lieu thereof a new section 8527 was enacted relating to the same subject matter. There are some changes in the new section but in general the same subject-matter is undertaken.

Several rules of statutory construction are set out by Judge Allison in the case of State ex rel. Klein v. Hughes, 173 S. W. (2d) 877, concerning the repeal and reenactment of a statute, which are as follows (l. c. 880):

"* * * The general rule is that when part of a statute is repealed by an amendatory act, the provisions retained are regarded as a continuation of the former law, while those omitted are treated as repealed. Belfast Investment Co. v. Curry, 264 Mo. 483, 496, 175 S. W. 201, 204(2). Such amendments have been accepted as controlling evidence of the legislative intent. 59 C. J. Sec. 612, p. 1035. The presumption is that the Legislature intended the unamended part to remain operative and effective as before, State ex rel. Dean v. Daves, 321 Mo. 1126, 1151, 1152, 14 S. W. 2d 990, 1002(9-11). * * *"

For our purposes, therefore, we may say that Section 10911, Laws of Missouri, 1941, is controlling in the present instance and that the proposed expenditures shall be derived from the revenue anticipated under Section 8527, House Bill 784, and will be budgeted under Class 3 of Section 10911.

Class 3 of Section 10914, Laws of Missouri, 1941, page 652, is as follows:

"Repair, upkeep and construction of roads and bridges on other than state highways and not in any special road district. List roads and bridges to be constructed."

This is the most recent enactment concerning the classification of estimated expenditures of counties and is the only section under which such county expenditures may be budgeted. Therefore, question four of your request is also answered in the affirmative.

The budget should be set up so as to include the expenditures which are to be made during the current fiscal or calendar year, based on all of the revenue which may be properly anticipated. Section 8527, R. S. Mo. 1939, was anticipated in making up the county budget for 1946, and unless the court

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should increase the levy of the special road and bridge tax under the provisions of House Bill 784 there would be no occasion to revise the budget. If, however, the court does increase the special road and bridge levy in accordance with House Bill 784, then it would become necessary to revise the budget.

Conclusion

It is the opinion of this department that: (1) the county court may draw warrants in anticipation of the revenue provided by Article X, Section 12(a), Constitution of Missouri, 1945, and Section 8527, House Bill 784, enacted pursuant thereto; (2) the county court should set up the amount anticipated from this source of revenue in its 1946 budget; (3) the revenue anticipated under Article X, Section 12(a), Constitution of Missouri, 1945, and Section 8527, House Bill 784, should be classified under Class 3 of Section 10911, Laws of Missouri, 1941 and (4) under Class 3 of Section 10914, Laws of Missouri, 1941; (5) the 1946 budget should include all of the revenue to be properly anticipated and unless the county court increases the special road and bridge levy in accordance with House Bill 784, it will be unnecessary to revise the budget after July 1, 1946.

Respectfully submitted

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