COUNTY BUDGET: Surplus in classes 1, 2 and 4 may be transferred to class 5 to be used as contingent and emergency expenses of the county.

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November 21, 1946

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Honorable David W. Wilson
Prosecuting Attorney
Lewis County
La Belle, Missouri

Dear Sir:

This is in response to yours of recent date wherein you request an official opinion from this department on the following statement of facts:

> "Lewis County has a surplus in class 1, 2, 4 and 5 county funds. They also have a debt for road equipment which debt was contracted in 1946. If it is proper, it is the desire of the County Court to amend the budget by taking some of the surplus in class 1, 2, 4 and 5 county funds and creating a contingent fund in class 5. It is their desire to pay on the debt for road equipment from the proposed contingent fund in class 5."

I note from your request that the county has a debt for road equipment which was contracted for in 1946, and it is proposed to transfer surpluses in class 1, 2, 4 and 5 of the county funds to a contingent fund in class 5. For the purpose of the opinion, we are assuming that the indebtedness for this road equipment is not in violation of section 26 (a) of Article 6 of the Constitution of 1945 which reads as follows:

> "No county, city, incorporated town or village, school district or other political corporation or subdivision of the state shall become indebted in an amount exceeding in any year the income and revenue provided for such year plus any unencumbered balances from previous years, except as otherwise provided in this Constitution."

The County Budget Act was originally enacted in 1933 by the Missouri General Assembly (Laws of Mo., 1933, page 340). Under section 2 of the Act as originally passed, entitled

"Classification of Expenditures of Counties," class 5, thereunder reads as follows at l.c. 342:

> "The county court shall next set aside a fund for the contingent and emergency expense of the county, which shall in no case be more than one-fifth of the anticipated revenue. From this class the county court may pay contingent and incidental expenses and expense of paupers not otherwise classified. No payment shall be allowed from the funds in this class for any personal service, (whether salary, fees, wages or any other emoluments of any kind whatever) estimated for in preceding classes."

Then under section 5 of said Act, entitled "Classes of Expenditures," we find that class 5 of said section provided as follows:

> "Contingent and emergency expense, not to exceed one-fifth of the total estimated revenue to be received. Purposes for which the court proposes the funds in this class shall be used shall be shown."

As the Act was originally passed, there was no provision made for transfer of moneys from one class of expenditures to another. These sections remained as originally enacted until 1941 when the General Assembly amended class 5 of expenditures and estimates (Laws of Mo., 1941, page 650) which now may be found in Volume 22, Mo. R. S. A., sections 10911, 10914. Class 5 under section 10911, as amended in 1941, reads as follows:

> "The county court shall next set aside a fund for the contingent and emergency expense of the county, the court may transfer any surplus funds from classes 1, 2, 3, 4 to class 5 to be used as contingent and emergency expense. From this class the county court may pay contingent and incidental expenses and expense of paupers not otherwise classified. No payment shall be allowed from the funds in this class for any personal service, (whether salary, fees, wages or any other emoluments of any kind whatever) estimated for in preceding classes."

Class 5 of section 10914, as amended, reads as follows:

> "Contingent and emergency expense.--The county court may transfer any surplus funds from class 1, 2, 3, and 4 to class 5 to be used as contingent and emergency expenses. Purposes, for which the court proposes the funds in this class shall be used, shall be shown."

It would appear from the amendments of the Budget Act, made by the General Assembly in 1941, that that body recognized the fact that the Budget Act, as originally passed, made no provision for transfer of surplus funds in cases where valid obligations existed against the county at the end of the year, and which could be paid if the surplus in a class could be transferred to a class from which such obligations might be paid.

It will be noted that the Act, as amended, provided that the surpluses transferred to class 5 were to be used as contingent and emergency expenses. The term "contingent expense" is defined in 17 C. J. S. at page 183 as follows:

> "Expenses that are possible or liable, but not certain, to occur; expenses unknown and uncertain and which may or may not be incurred hereafter; expenses happening from unseen causes, or subject to unforeseen conditions; unexpected, casual, or incidental expenses. The term sometimes is used also as meaning general or miscellaneous expenses, rather than expenses which are uncertain or unforeseen.* * *"

If the debt for the road equipment to which you refer in your letter was not contemplated at the time the budget was made up, then we think such a debt would be considered as a contingent expense as hereinabove defined. However, I note from your letter that you state that if the county court is authorized to transfer these funds that the court desires to pay <u>on the debt</u> for road equipment from the proposed contingent fund.

As stated above, we are assuming that the total debt incurred is within the constitutional limit. That is, that it, together with other obligations of the county, payable out of county revenue, does not exceed the revenue for the current year. Of course, if the current expenditures of the county, out of county revenue, plus the indebtedness incurred for the road equipment, exceeds the income and revenue provided for this year, plus any unencumbered balances from

previous years, then the debt would be void and you would not be authorized to pay any part thereof, even though you were authorized to transfer funds to class 5.

In the case of State ex rel. Christian County vs. John P. Gordon, State Auditor, 265 Mo. 181, the court, in discussing the limitations of the Constitution on counties incurring debts, said at l.c. 188:

> "* * * In Book v. Earl, 87 Mo. l.c. 252, it was said that the unmistakable purpose of section 12 of article 10 of our Constitution is to force counties to transact their business on a cash basis, and not incur debts to be paid after the year in which such debts were created. The doctrine of that case has been cited with approval many times. * * * * This seems to be the only fair and logical construction of our organic law. The fact that the Constitution itself speaks in such plain terms renders an evasion of its words or intent impossible, however much we may wish to see relator and other municipalities similarly situated permitted to borrow money to make public improvements."

CONCLUSION

From the foregoing, it is the opinion of this department that the county court may transfer surpluses in classes 1, 2, 4 and 5 of the county funds to a contingent fund in class 5 of the budget to pay contingent and emergency claims, provided such claims are valid obligations of the county.

Respectfully submitted,

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APPROVED:

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