

COUNTY BUDGET LAW: Attempted purchase of unbudgeted item by county officer does not create obligation against county.

February 25, 1953



Honorable Olin B. Johnson
Prosecuting Attorney
Schuyler County
Lancaster, Missouri

Dear Mr. Johnson:

Reference is made to your request for an official opinion of this department reading as follows:

"I am desirous of knowing whether your department has issued any opinions which might be relevant to a problem we are confronted with in this county.

"A former Probate and Magistrate Judge of this county made certain budgetary requests for sectional book cases which were refused by the county court. The official then proceeded to order such cases apparently intending to force the county court to pay for them. The official died in office and his successor has been appointed. The cases have arrived but have not been accepted.

"The present holder of the office does not intend to take any action on the matter but my principal concern is with regard to the enforceability of this obligation, if any, by the supplier against the county.

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"As there are several hundred dollars involved I would appreciate any assistance your department might be able to give this office in this matter."

We note that Schuyler County is one of the fourth class, and, therefore, will be governed by the provisions of Section 50.670 to 50.740, inclusive, RSMo 1949.

We note from your letter of inquiry that although included in the estimate filed by the officer, the county court did not approve the budgetary request for an expenditure covering the item of furniture. This action no doubt was taken in accordance with the provisions of Section 50.740, RSMo 1949, providing in part as follows:

"It is hereby made the first duty of the county court at its regular February term to go over the estimates and revise and amend the same in such way as to promote efficiency and economy in county government. The court may alter or change any estimate as public interest may require and to balance the budget, first giving the person preparing supporting data an opportunity to be heard but the county court shall have no power to reduce the amounts required to be set aside for classes one and three below that provided for herein. After the county court shall have revised the estimate it shall be the duty of the clerk of said court forthwith to enter such revised estimate on the record of the said court and the court shall forthwith enter thereon its approval."

(Emphasis ours.)

In construing this portion of the statute the Supreme Court said in *Bradford v. Phelps County*, 210 S.W. (2d) 996, 1.c. 999:

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"* * * It is evident from the language of the County Budget Law that county courts in complying with the Law have duties of a discretionary nature in examining, revising and changing the estimates of the county's expenditures to the end of promoting the standard of 'efficiency and economy in county government,' Section 10917, supra. * * *

"* * * As was the county court in the Daves case exercising discretion in reducing the compensation to the county treasurer to an amount which it deemed 'just and reasonable' (the standard stated in the statute involved in that case), so was the county court in the case at bar, in examining, revising and changing the estimates as required by the County Budget Law, exercising discretionary action in the public interest and with the purpose of promoting 'efficiency and economy in county government.'"

From the foregoing it appears that the County Court of Schuyler County acted within its statutory authority in deleting the item of proposed expenditure from the estimate of the officer.

There yet remains the question as to whether or not the supplier of such item may maintain an action against the county for the payment of the value thereof. We note at the outset that the item has not been "received." We take it from that statement that no acceptance of the item has been made by any person on behalf of the county. This, of course, could not serve to void a validly contracted obligation, although if the rejection were for good cause, it might of itself serve to defeat any claim for the value of the item.

However, it is our thought that in any event the supplier cannot recover. We direct your attention to the

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case of Elkins-Swyers Office Equipment Co. v. Moniteau County, 209 S.W. (2d) 127, wherein the Supreme Court, after discussing the failure of the County Court of Moniteau County to budget an expenditure for an item quite similar to that involved in your opinion request, said at l.c. 130 and 131:

"Section 10917 requires the county court to review the estimates and revise, amend, alter or change 'any estimate as public interest may require and to balance the budget * * *.' The budget thus revised is to be entered and approved of record and the county clerk is required to file certified copies thereof with the county treasurer and state auditor; and: '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 * * *.'

"From all the provisions of the County Budget Law, we hold the items of the instant case, although within Class 6, should have been budgeted to enforce payment by the County. * * *

"Plaintiff seeks compensation out of public funds. The just compensation clause of the Constitution contemplates a lawful taking of private property for public use. Public officials are servants of the public and in the performance of their duties regarding public funds do not deal with their own. Public funds are trust funds and public officials act in a trust capacity with respect thereto, subject to all limitations of whatever nature upon their authority imposed by the public. All persons are charged with knowledge of the laws enacted by the

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sovereign for the protection of its property and are required to take due notice thereof. * * * A broad distinction exists between the acts of a public official and those of the agent of an individual within the apparent scope of the agent's authority. The unauthorized acts of public officials are, and in law are known to be, unauthorized and consequently not binding on the principal, their mistakes being their own and not the mistakes of the sovereign. All this rests in a sound public policy for the protection of the public. A private citizen who acquiesces in and aids and abets unauthorized acts of a public official by voluntarily commingling his private property with property of the public cannot successfully invoke the just compensation clause of the constitution because there has been no taking of private property for public use by the sovereign. * * *"

CONCLUSION

In the premises we are of the opinion that an unbudgeted item of expenditure cannot become the basis of a valid claim against a county.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Will F. Berry, Jr.

Yours very truly,

JOHN M. DALTON
Attorney General

WFB/fh