

COUNTY BUDGETS:
UNBUDGETED REVENUE:

A county court can use unbudgeted revenue, which is part of the Class 6 fund, to pay off an emergency expense budgeted under Class 5 of the budget law if there are not sufficient funds in Class 5 to pay the expense, and if there are cash funds on hand sufficient to pay all claims provided for in Classes 1, 2, 3, 4 and 5 together with any expenses already incurred under Class 6 and if all outstanding warrants constituting legal obligations are paid.



September 29, 1955

Honorable Robert L. Lamar
Prosecuting Attorney
Texas County
Houston, Missouri

Dear Sir:

Your request for an opinion reads as follows:

"A situation has arisen between the County Court of this County and the County Clerk, who is by law in this class county made the budget officer, which seems to call for an opinion from your office.

"On January 1, 1955, there was available in cash in the County Treasury, unencumbered and unpledged, \$85,781.97. The final budget, made up by the County Court and County Clerk, covering estimated expenditures for 1955, totaled \$80,456.82, leaving a net surplus of \$5,325.15. These figures have no reference whatever to estimated tax revenues for the year 1955, all being net surplus carried over from previous years.

"The County Court, in preparing its budget, made no allocation whatever of funds to Class 6 expenditures contemplated in Section 50.680 and 50.710, the \$5,325.15 balance being simply carried as unbudgeted surplus.

"Since the first of the year an emergency situation has arisen; the roof of the County Court House, with the beginning of hot weather,

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deteriorated to such an extent that the records in the office of the Probate Court and the Magistrate Court were endangered, and there was a possible danger to the structural parts of the Court House building, itself, particularly the upper floor. The condition was such that the only feasible procedure was to completely re-roof the entire building, with new flashing and considerable repairs to the fire walls, including repairs of some large cracks in the upper part of the outer walls of the building. The County Court correctly deemed it an emergency, and entered into a contract with a roofing company for building a new roof and the necessary repairs to the walls, at a total cost of \$4,060.00.

"The County Court, in the 1955 budget, had allocated a small sum, something like \$1,200.00, in Class 5, for repairs to Court House, jail and County buildings. However, this roofing contract considerably exceeds the sum specifically allocated in the budget, itself.

"The County Clerk, as budget officer, has raised the question whether or not, regardless of the order of the County Court so to do, he has authority to write a warrant against unbudgeted surplus funds now in the treasury in payment of the portion of this emergency expense which is not covered by the sum specifically allocated in Class 5; this, in spite of the clear language of Paragraph 6, Section 50,680. I might add that for the past several years the County Court of this County has covered in its budget only the first five classes called for in the budget law. For some reason unknown to me, they have simply ignored Class 6, although for several years the County has annually had an unexpended and unbudgeted surplus."

"I would appreciate an opinion on this question at as early a date as convenient."

The question is then whether the county court can use the unbudgeted revenue of the county to pay part of the expenses of repairing the county courthouse which you have budgeted in Class 5.

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In order to answer this question it is necessary to answer a subordinate question which is, in what class is this unbudgeted revenue to be classified. There is no provision in the budget law which directly states that unbudgeted revenue is to be classified in any specific class, but Class 6 of Section 50.680, RSMo 1949, states in part:

"After having provided for the five classes of expenses heretofore specified, the county court may expend any balance for any lawful purpose; * * *." (Emphasis supplied.)

Thus it would seem that any balance that is unbudgeted surplus, would be an expenditure out of Class 6 and thus would be classified by operation of this statute in Class 6 and the county could expend the same as provided in the budget laws. Since this unbudgeted surplus is part of Class 6, the next question is, can funds from Class 6 be expended for an emergency expense budgeted under Class 5.

In State v. Cribb, 273 S.W. 2d 246, the Missouri Supreme Court En Banc, stated at pages 249 and 250:

"(3-5) It will be noted that the funds assigned to Class 6 may be expended with certain restrictions for 'any lawful purpose'. (Emphasis ours.) One of the restrictions imposed is that 'there is actually on hand in cash funds sufficient to pay all claims provided for in preceding classes together with any expense incurred under class six; * * *.' In other words, the funds in Class 6 may not be depleted unless the funds in the other classes are sufficient to pay all claims contracted to be paid out of the funds in such classes. The intention of the Legislature, as evidenced by the provisions supra, established Class 6 somewhat as a guarantee that all claims in the preceding classes shall be paid. It is common knowledge that unforeseen events often occur which require expenditures in excess of the amount assigned to a certain class such as Class 3, the bridge and road fund. If the budget for such class is not sufficient to take care of the unforeseen expense, the county court may use money in Class 6, provided there is a sufficient sum in that class that is not subject to the restrictions mentioned in the statute. It is

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apparent that that was done in this case when it became evident that Class 3 expenditures might exceed the sum allocated to that class by the budget."

The expense set forth in your request is an unforeseen expense as contemplated by the court in the case cited above and under the law of this case it would seem that funds in Class 6 can be used to pay for an expense budgeted in Class 5 when there is not sufficient funds in Class 5 to pay for such unforeseen expense; provided that there is actually on hand in cash funds sufficient to pay all claims provided for in Classes 1, 2, 3, 4, 5, together with any expense incurred under Class 6, and provided that all outstanding warrants constituting a legal obligation of the county must first be paid.

Although Paragraph 6 of Section 50.710, RSMo 1949, in part, states that the court shall show on the budget estimate the purpose for which any funds as available to this class shall be used it seems that in the light of the Missouri Supreme Court's holding in State vs. Cribb, cited supra, an unforeseen expense such as we have here does not have to be included within the Class 6 budget.

CONCLUSION

It is the opinion of this office that a county court can use unbudgeted revenue, which is part of the Class 6 fund, to pay off an emergency expense budgeted under Class 5 of the budget law if there are not sufficient funds in Class 5 to pay the expense and if there are cash funds on hand sufficient to pay all claims provided for in Classes 1, 2, 3, 4 and 5 together with any expenses already incurred under Class 6 and if all outstanding warrants constituting legal obligations are paid.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Harold L. Volkmer.

Yours very truly,

John M. Dalton
Attorney General

HLV:vlw