

COUNTY BUDGET LAW:  
COUNTY FAIRS:  
TAXES:  
ELECTIONS:

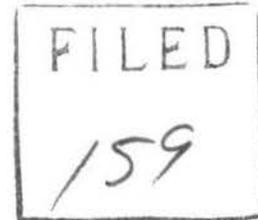
Revenues under section 262.500 to 262.540 RSMo 1959, are under the Budget Law. These revenues must be divided into separate funds--one for premiums which is not a revolving fund. The remaining fund may be used for premiums or for fairgrounds

unless the latter use is required in the tax election proposition. Surplus from any year may be used only for premiums or advertising.

OPINION NO. 159

August 7, 1969

Honorable John C. Ryan  
State Senator  
Senate Post Office  
Capitol Building  
Jefferson City, Missouri 65101



Dear Senator Ryan:

This is in answer to your letter of recent date in which you requested an official opinion from this office concerning the following matters:

1. Must the revenue collected under the provisions of Sections 262.500 to 262.540 RSMo 1959, for the purpose of providing support as stated in these provisions for district or county fairs, be considered subject to the County Budget Law, Sections 50.525 to 50.745 RSMo 1959 and Cum. Supp. 1967, and if they must be so considered, within which category, if any, should they be placed?
2. Must such revenue as is collected under the provisions of Sections 262.500 to 262.540, RSMo 1959, be divided between two different funds upon receipt, or may these revenues be carried as a single, county fair fund?
3. Is the fund in which the revenues so collected are placed a revolving fund?
4. How are the funds received under the provisions of Sections 262.500 to 262.540, RSMo 1959, to be allocated?
  - a. May the county court exercise its discretion in the allocation of funds for building and for premiums in the year the funds are received?
  - b. May funds allocated for premiums in one year be allocated to maintenance and improvement of fair grounds the following year?

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I. Applicability of the County Budget Law.

Section 262.500 RSMo 1959 provides for the collection of a tax for the purpose of "encouraging, promoting and improving the livestock, poultry, agricultural, horticultural, mechanical fabrics and fine arts, products and articles of domestic industry, and the exhibition of such stock, poultry articles and commodities, as the district or county fair held in the county." This tax, when aggregated with other taxes levied by the county, may not exceed the constitutional limit, nor may it exceed two mills per dollar valuation. The levy is conditional also upon the presentation of a petition signed by a specified number of taxpayer-voters of the county, and upon the approval of the proposed tax levy at a special election called under the provisions of Section 262.530 RSMo 1959.

The disposition of the funds collected from the tax levy is controlled by the provisions of subsections 2 and 3 of section 262.500 and by sections 262.510 and 262.520 RSMo 1959. Under subsection 3 of section 262.500, the amount of the revenue from the tax levy not expended in any year is to be retained in a special fund for the purpose of section 262.500 in succeeding years. That is, they may be used for the purposes set forth in section 262.500 and for no other purposes, and they are to be retained by the county treasurer in a special fund. The treasurer must account for the receipt and expenditure of the revenue collected under sections 262.500 to 262.540 as provided in section 54.150 RSMo 1959.

The County Budget Law is comprised of sections 50.525 to 50.745 RSMo 1959 and RSMo Supp. 1967. Priorities in payments and classification of budget items are now provided by sections 50.540 RSMo Supp. 1967, and 50.550 RSMo.

Section 50.540 requires that the budget officer of the county receive "estimates of its requirements for expenditures and its corresponding revenues for the next budget year compared with the corresponding figures for the last completed fiscal year and estimated figures for the current fiscal year" from "each department, office, institution, commission or court of the county." "Revenue" is defined in section 50.527 RSMo Supp. 1967, as follows:

". . .the ordinary or general revenue to be used for the current expenses of the county regardless of the source from which it is derived."

Moreover, the first sentence of section 50.550 states that:

"The annual budget shall present a complete financial plan for the ensuing budget year."

The purpose of the Budget Law has been said to be "to regulate the usual operations of the regular departments of government whose needs could be foreseen and planned" for the budget period. State ex. rel. Armentrout vs. Smith, 353 Mo. 486, 182 SW 2d 571 at 574 (1944). It is to compel the county to operate on a cash basis and not to obligate the county beyond its revenues. See State ex. rel. Strong vs. Cribb, 364 Mo. 1122, 273, SW 2d 246 (1954). Another function of the Budget Law is to give the public an opportunity to be certain that funds are

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are being properly allocated and spent. This is suggested by the provision in section 50.540 subsection 5 for public hearings by the budget officer "before preparation of the budget document."

The all-inclusive nature of "revenue" as defined in the Budget Law, and the plain demand that all types of revenues and planned expenditures be accounted for in section 50.550, as well as the apparent purposes which that Budget Law is intended to carry out, compel the conclusion that the funds received under sections 262.500 to 262.540, no matter how restricted and closely accounted for these funds are under other statutory provisions, are nevertheless included within the Budget Law.

While there is no specific provision for a class comprising tax receipts from this special levy, the budget officer is free to provide for these funds under the appropriate heading which will make clear their purpose, origin and the special nature of the fund to which they are to be credited. The last sentence of section 50.550, "The county court may create other funds as are necessary from time to time" would seem to provide ample authority for such a procedure.

## II. Disposition of Funds Received

The disposition of revenue received under the provisions of Sections 262.500 to 262.540 RSMo 1959 is controlled primarily by subsections 2 and 3 of section 262.500 and Sections 262.510 and 262.520. Subsection 2 of Section 262.500 states that after the special tax is levied,

" . . . one-half of which levy shall be set aside by the county court and distributed ratably to the exhibitors of the public fairs held in the county, for the purpose of paying premiums to exhibitors of (sic) the articles and commodities in Section 262.500 to 262.540. The other one-half of which levy, in the judgment and discretion of the court may be used for the purpose of purchasing grounds or erecting suitable building for such fair purposes; but if the grounds for the purposes are owned by the county, or leased or otherwise secured or obtained for such uses, then the other one-half may be used by the court in erecting such building. If it is the discretion and judgment of the court that the other one-half of the levy be not used for grounds or buildings then the whole of the levy may be used for paying such premiums. If the petition for the election asks that one-half of the levy be devoted to acquiring of lands or erecting of buildings, then the proposition submitted shall contain provisions for such devotion; and if the majority favor the proposition, then the court shall so expend and use the proceeds of the one-half of the levy." (Emphasis added).

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The above subsection requires that there be two separate funds between which the revenue received from the special tax levy must be divided. One-half of the funds must be put in a separate mandatory premium fund. The remaining half may be placed in a fairgrounds fund. The use of the latter fund depends upon the language of the proposition put to the voters in the election under Sections 262.500 and 262.530. If the proposition states that one-half of the revenue shall be placed in a fund for premiums, and one-half of the revenue shall be placed in a fund which may be used for premiums, or for the acquisition or the improvement of fairgrounds, the county court retains its discretion as to the allocation of the revenue in the second fund. However, if the proposition, following the language of the petition which initiated the process leading up to the special election, states that the second fund will be used for acquiring lands or erecting buildings, then the county court retains no discretion as to the allocation or use of that fund, either.

The use of surplus remaining in the hands of the county court after the holding of the fair is controlled by subsection 3 of section 262.500; which provides as follows:

"If the surplus remaining out of the proceeds of any levy made under sections 262.500 to 262.540, in any year, in the hands of the county treasurer shall constitute a fund for the purposes of sections 262.500 to 262.540, and may be used either as premiums offered or advertising for exhibits to be made under any provision of sections 262.500 to 262.540."

The money remaining on hand is placed in a fund which may be used either for premiums or for advertising. The listing of alternative uses rather than a general statement as to the county court's discretion in the allocation of this surplus between advertising and the other uses permitted under subsection. 2 suggests that no other use may be served by this surplus fund. Thus, without regard to the required or discretionary use to which the revenue was to be put originally the surplus may be used only for advertising or premiums. Moreover, the general language of this third subsection of Section 262.500 in conjunction with the apparent intention of the legislature, expressed in the provisions of Section 262.500, to favor the use of funds for premiums, makes it seem clear that the amount in the surplus fund may not be credited to the mandatory premium fund for the purpose of determining the amount to come into that fund from current tax revenues. That is, the funds to be set up under subsection 2 Section 262.500 are not revolving funds.

#### CONCLUSION

I. It is the opinion of this office that revenue collected under the provisions of Sections 262.500 to 262.540 RSMo 1959, relating to public fairs held in a county is subject to the County Budget Law.

II. It is further the opinion of this office with regard to such revenue that:

- A. The revenue must be divided between two funds in the year collected. One of these funds, contain-

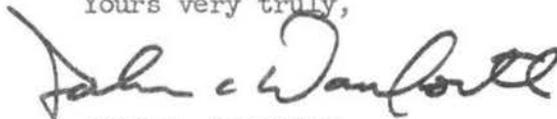
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ing one-half of the total revenue collected under the tax levy, must be used for premiums.

- B. Neither fund under the provisions of subsection 2, Section 262.500 is a revolving fund.
- C. The second fund, not required for premiums under the provisions of subsection 2, Section 262.500 may be used for any purpose set forth in subsection 2 in the discretion of the county court. However, if the proposition submitted to the voters in the election under subsection 1, Section 262.500 and Section 262.530 provides that this second fund shall be used for the acquisition or the improvement of fairgrounds, then the use of this fund shall be limited to those purposes, and the county court shall have no further discretion as to its use.
- D. The surplus remaining from any tax levy under the provisions of subsection 3, Section 262.500 must be used for advertising or for premiums. It may not be used for the acquisition or improvement of fairgrounds.

The foregoing opinion, which I hereby approve, was prepared by my Special Assistant, Dennis J. Tuchler.

Yours very truly,



JOHN C. DANFORTH  
Attorney General

DJT: mlz