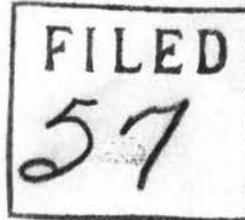


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COUNTY BUDGET SYSTEM: Expenditures for maintenance of county roads including compensation for personal services cannot be paid out of class five having been budgeted as required by law under class three.

December 12, 1950

12/13/50



Honorable G. Logan Marr
Guenther Building
Versailles, Missouri

Dear Sir:

We have your request for an opinion of this department. Your letter is as follows:

"Morgan County is a third class county. This is the month of November 1950. The funds set up in class No 3 of the County Budget for the upkeep, repair and construction of county roads and bridges has become exhausted. There is an unpledged, unobligated, unspent surplus in classes number one, two and five.

"The upkeep and repair of the county roads is a necessity and an emergency, and the money is needed to pay the cost of supplies and the wages necessary to pay the operators of the county road maintainers. The wages and the salaries of the county employees on the county road machinery was not estimated and set up in class number four or any other class, other than three.

"The agent in the State Auditor's Office of the State of Missouri, in charge of county budgets for counties of this size, which is a county of less than fifty thousand population, informed the County Clerk for the County Court, that any surplus of funds unexpended and unobligated in classes numbered, one, two, five, may be transferred to class number five, and the wage and salaries of county employees necessary to operate the county machinery repairing and upkeeping county roads, could and should be paid out of class number five after the surplus had been transferred. This was and is the kind of an emergencies so designated within the meaning of class number five.

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"After reading 198 S.W.(2d) 10, I want to know if it is legal for counties of this size and class to transfer surpluses in classes one and two and five to class, FIVE, and then to pay the expenses for wages and supplies for the road machinery in operation of county machinery in the repair and upkeep of county roads out of class Five? ? Ordinarily these expenses are paid out of class No. Three, but the funds in class three under the budget have become exhausted."

Since Morgan County is a county of the third class Sections 10910 to 10917, inclusive, R.S.A. Mo. 1939, are applicable insofar as its budget is concerned.

Section 10911, R.S.A. Mo. 1939, provides for the classification by the county court of the estimated expenditures of the county for the year and provides for six different classes and provides what type of expenditure shall be provided for under each class. The portion of this section relating to class 1,2,3,4 and 5 reads as follows:

"The court shall show the estimated expenditures for the year by classes as follows:

"Class 1. The County Court shall set aside and apportion a sufficient sum to care for insane pauper patients in state hospitals. Class 1 shall be the first obligation against the county and shall have priority of payment over all other classes.

"Class 2. * * * *

"Class 3. 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.

"Class 4. * * * *

"Class 5. 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

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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."

We call attention to the portion of the above quoted section included in paragraph 5 thereof which provides a fund for contingent and emergency expenses of the county which fund is to be derived from unexpended portions in classes 1,2,3 and 4, which are to be transferred to class 5 and which provides that contingent and emergency expenses are to be paid from this class 5 fund and then provides that "no payment shall be allowed from the funds in this class for any personal services, (whether salary, fees, wages or any other emoluments of any kind whatever estimated for in preceding classes." (Underscoring ours).

It appears to us that this class 5 fund is not available for the purpose of the road expenditures mentioned in your letter, which expenditures according to your letter involve wages and salaries of the county employees operating county road machinery, for the reason that the portion of Section 10911, last above quoted, specifically prohibits the use of the class 5 fund for "any personal services (whether salaries, fees, wages or any other emoluments of any kind whatever) estimated for in the preceding classes."

Furthermore, a portion of Section 10914, R.S.A. Mo. 1939, which pertains to class 5, provides that "purposes for which the court proposes the funds in this class shall be used shall be shown."

We are of the opinion that this means that the budget under class five shall show the purposes for which it is intended that the funds in class five shall be used. Your letter indicates that your county court desires to use some of the class five funds for the purchase of supplies and for wages to operators of county road maintainers. In the case of Elkins-Swyers Office Equipment Company v. Moniteau County, 209 S.W. 2d. 127, the Supreme Court of Missouri, after quoting the following provisions in that portion of Section 10914, supra, pertaining to class six,

"* * * The court shall show on the budget estimate the purpose for which any funds anticipated as available in this case shall be used.* * *"

held class six funds not budgeted under class six to be not available because not budgeted.

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We are of the opinion that in view of the similarity of these two provisions of the statute as to class five and class six, respectively, the logic of the above quoted decisions with reference to proposed class six expenditures is applicable also to class five expenditures and that class five funds therefore are not available for any purpose not budgeted under class five. Undoubtedly the expenditures referred to in your letter were not shown in the budget under class five because they were shown under class three.

CONCLUSION

We are accordingly of the opinion that funds in class five in your county cannot be used to pay the expenses involved in road maintenance which expenses were budgeted under class three.

Respectfully submitted,

SAMUEL M. WATSON
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

SMW:mw