

COUNTY COURTS: Refund from State to County to be credited to county fund from which warrant was issued, through error, to pay entire cost of road: Such sum can be used for road maintenance in year 1948 even though prior to the refund amount permitted by budget had been spent.

November 26th, 1948.

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Hon. Ralph R. Bloodworth,
Prosecuting Attorney, Butler County,
Poplar Bluff, Missouri.

Dear Sir:

This will acknowledge receipt of your letter of September 27th, 1948, in which you request an opinion of this department. Your letter, omitting caption and signature, is as follows:

"The County Court has asked for an opinion from your office on the following matter: The County Court built a short farm to market road out of the 1948 road fund. Part of this road money is to be refunded to the County by the State of Missouri and will be repaid to the County next month. The County road fund is nearly exhausted and the County Court desires to know if it can spend the money paid to Butler County by the State of Missouri in maintaining the roads for the rest of the year.

It is my opinion that the County Court should be able to spend this money since the County Court advanced the money out of this years road fund knowing that a part of the road expense would be repaid by the State of Missouri. Otherwise, they might not have undertaken the expense of constructing this road. Thank you very much."

Your request calls for a construction of Sections 8619.1 to 8619.7 Missouri Revised Statutes Annotated. These provisions are quite lengthy and since some portions of them are not pertinent to the questions to be determined herein, it will not be necessary that we quote the statutes in toto. However, in order that the purpose of the Act can be understood, we set out the following which is designated as Section 8619.1 Mo. R.S.A. and which provides as follows:

"8619.1 County Aid Road Fund Created- Apportionment. There is hereby created a County Aid Road Fund to receive appropriations by the General Assembly from the Missouri Post-war Reserve Fund for the purpose of aiding and assisting the improvement, construction, reconstruction and restoration of county roads in the

manner provided in this Act. *****".

It is further provided in Section 8619.3 Mo. R.S.A. that certain roads are to be selected on which may be used the funds in question and for the purpose of this opinion we must assume that the County Court of Butler County selected the road for improvement as provided therein. In the following section of the statutes, Section 8619.4, it is provided that the Engineer or Surveyors shall prepare the plans for the contemplated road and when such plans are approved by the State Highway Commission, the State Comptroller shall then be notified and after he certifies his approval he shall set aside the necessary funds. After there has been a proper advertisement for bids on the project, as provided in Section 8619.5 Mo. R.S.A., and the work has been completed and approved by the State Highway Commission, as prescribed in Section 8619.6, the State Comptroller then certifies a warrant signed by the State Auditor, drawn on the State Treasurer and payable to the County Treasurer in the amount set aside for the project.

Your letter states that the entire cost of the road was advanced by the County Court or at least such letter indicates that to be true. This department feels that the cost of the road should have been paid at the time the State of Missouri made the refund. If this had been done, there would be no confusion at the present time. The refund could have been credited to the proper fund and then the County Court could have ordered a warrant issued from such fund for the total cost of the project. Along this line we should set out the provisions of Section 8619.6 Mo. R.S.A. which provides the following:

"8619.6 Payment For Work On County Road Projects.
Upon the completion of the project or projects for improvement, construction, reconstruction or restoration of county roads, as provided for in said contract, the State Highway Commission shall determine if such work has been performed and said project or projects completed in accordance with said plans and specifications submitted and approved. If it so finds, the said State Highway Commission shall notify the comptroller of its finding, and the comptroller shall certify a warrant, to be signed by the state auditor, drawn on the state treasurer, payable to the treasurer of said county, in the amount set aside for said project or projects, as herein provided for. Provided, however, payment on such project or projects may be made from time to time as work on the same progresses, provided, such payments shall in no event be in excess of the amount set aside for said project or projects, and provided further, that at the time of such payment the county shall make a like payment on said project or projects. The State Highway Commission and the county court of each county shall jointly determine at what time and in what amounts payments, if any, shall be made as work progresses on said project or projects included in said contract, and the State Highway Commission shall notify the comptroller

of its findings and the comptroller shall certify warrants, to be signed by the state auditor, drawn on the state treasurer, payable to the treasurer of said county, in such amounts."

Under the above provision, the State is not authorized to issue a warrant for refund to the county until the work has been completed and approved by the State Highway Commission unless the said Commission and the County Court jointly determine that payments may be made during the progress of the work. In such case, payments must be made by the State as well as the County. However, in the instant case, no such determination was made and consequently we feel that there was no reason why the County should have made the payment in question until the State had issued its refund warrant. The contractor on the project should know the law and not expect payment for his work until the project is completed.

In view of the above, it would appear that the payment of the total cost of the road which was made by the County was premature and made through error and the Court should be permitted to place the refund of \$4,000.00 back in the 1948 Road Fund from which fund the payment was made. From your letter of November 19th, 1948, it appears that the refund has been made by the State.

The next question to be considered is whether, after the refund made to the county is placed in the 1948 Butler County Road Fund, the County Court can then use such money for the purpose of maintaining the county roads for the balance of the year 1948. Your letters state that the aforesaid fund is "nearly exhausted", but when the State refund is credited thereto, then, of course, there will be a balance in such fund. For example, if the 1948 budget allowed the Butler County Road Fund to make expenditures up to \$50,000.00, and that amount had been spent, then ordinarily, under the statutes, no more expenditures could be made from such fund during 1948. However, included in the expenditures from such fund during 1948, is the amount paid through error for the road in question. Now, although the records will so indicate, has the sum of \$50,000.00 allotted to the road fund actually been spent? Would the use or spending of the additional \$4,000.00 received as a refund, be a violation of the budget limitations? Has this money which was paid out for the road actually been spent or can it be looked upon merely as an advancement by the county?

The County budget law was passed by the legislature for the purpose of providing a method by which the counties might determine the obligations to be incurred in a given year and to keep the expenditures within the anticipated income. In the case of Frank vs Buchanan County, 108 SW (2) 430, 341 Mo. 727, the Supreme Court of this state said:

"The effect and intent of the budget law, as we understand it, is to compel, or at least to make it more expedient, for the County Courts to comply with

the constitutional provision, Section 12, Article 10. Mo Constitution, which provides that a county shall not contract obligations in any one year in excess of the revenue provided for that year."

Applying the above to the instant question, if the refund from the State is placed in the 1948 County Road Fund (the fund from which the original payment was made), and the county court uses such fund for the maintenance of the county roads in Butler County, such act on the part of the court would not be a violation of the terms and intention of the budget law, since the county court will not have exceeded the anticipated revenue for the year 1948. Although any further expenditures from such fund may technically exceed the amount set by the budget, the fact is that the fund has really not been exhausted since the deposit of the refund will leave a balance unexpended in the fund which would not have been "nearly exhausted" if the payment for the project had been made at the right time.

If the county budget permits expenditures of county funds for the benefit of the roads up to \$50,000.00, then the court should be allowed to spend that sum. If the refund is credited to the 1948 Butler County Road Fund, there will be an unexpended balance of county funds credited thereto and the County Court should be authorized to use it during the year 1948.

CONCLUSION.

It is therefore the opinion of this department that the refund paid to Butler County by the State in conformity with the aforesaid provisions of the statutes should be placed to the credit of the county fund from which the payment was made for the improvement of the roads in question; it is further the opinion of this department that the County Court has the authority to spend the amount of the refund paid by the State for the maintenance of the county roads even though, prior to the deposit of the refund, the amount permitted to be spent under the budget had been exhausted.

Respectfully submitted,

John S. Phillips,
Assistant Attorney General.

Approved:

J.E. TAYLOR,
Attorney General.

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