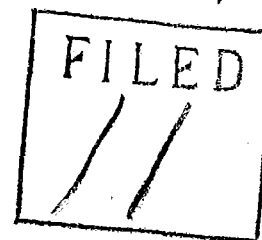


✓COUNTY BUDGET ACT: Expense for stenographic hire for prosecuting attorney can only be paid out of surplus, if any exists, or class 6.

March 31, 1941

Mr. Llyn Bradford
Prosecuting Attorney
Phelps County
Rolla, Missouri



Dear Sir:

This department is in receipt of your request for an opinion of March 25. The question which you present is in substance as follows:

"Due to the increase in the population of Phelps County at the present time by the construction of Ft. Leonard Wood and as a result of which the prosecuting attorney's duties have multiplied more than three fold, can he now obtain expense for stenographic assistance, the expense of which was not listed in the budget for the year 1941 at the time the budget was approved."

There has always been a question, which has never been decided by the courts, as to the liability of a county for stenographic hire for the office of prosecuting attorney. However, this department has ruled heretofore that the prosecuting attorney may have stenographic assistance, and we assume that you are familiar with the ruling. The fact that you failed to include the same in the estimate of your budget for the ensuing year, as provided in Section 10911 R. S. Mo. 1939, would not necessarily preclude you from receiving the same, under conditions which we will mention later. We assume you failed to include it under Class 4, which refers to the salaries of county officers.

Mr. Llyn Bradford

-2-

March 31, 1941

There is no provision for altering or changing the budget estimate once it is approved by the county court and filed with the State Auditor. In 1937, the legislature amended Section 10911 as to Class 5 and now permits a transfer from Classes 1, 2 and 3, if any surplus, so that the same may be used as contingent and emergency expenses, but there is a prohibition to the effect that none of the funds shall be used for personal services, whether it be salaries, fees, wages or any other emoluments of any kind whatever, which should have been estimated in preceding classes. The Budget Act makes it mandatory that the priority of classes be sacredly preserved. The only reason we mentioned Class 5 as a possibility from which the same may be paid is because Class 5 is the last class. Therefore, if there is any surplus in any other class, which might be transferred to Class 5 without jeopardizing the priorities, it is possible that stenographic expense may be paid when this can be definitely ascertained some time during the year.

However, the only safe legal way in which to pay the expense in the event that the county court should permit the same is from Class 6, which provides that funds in this class may be used for any lawful purpose providing there are no outstanding warrants constituting legal obligations.

If the conditions do not exist as we have mentioned above, we are of the opinion that there is no way by which the county court can be compelled to pay this expense during the ensuing year.

Respectfully submitted,

OLLIVER W. NOLLEN
Assistant Attorney General

APPROVED:

(Acting) Attorney General
OWN:RT