

COUNTIES: Various questions relative to the
WARRANTS: payment of county warrants and of
JUDGMENTS: judgments obtained on county warrants
PRIORITY OF PAYMENT: and as to the priority of such judgments over such warrants discussed.

February 8, 1940

Hon. Carl Williamson
Prosecuting Attorney
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Doniphan, Missouri

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Dear Sir:

This is in reply to yours of recent date wherein you submitted a request as follows:

"1. (a) When a County Warrant has been reduced to a circuit court judgment, does that warrant lose its identity as a warrant and become merged in the judgment so that the judgment debtor must look to his judgment as a judgment for collection; (b) or does he retain all of his original rights, claim and status on the Register Warrant; (c) or must he wait until all registered warrants for the same year in all the funds and classes are paid before he can look for payment.

"2. (a) When a county warrant has been reduced to a circuit court judgment, and the treasurer receives the money with which to pay said judgment warrant, must the Treasurer hold that money in reserve just the same and pay the warrant even though it is in judgment; or (b) in that event is the warrant automatically cancelled on the register, or must the

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County Court order it cancelled; and (c) can the Treasurer go ahead and use the money to pay the next warrants in line in the same fund; (d) and if so, after all the warrants in that particular fund have been paid for that year, can the County Court order any cash balance on hand for that fund, transferred to another fund for the same year, to pay unpaid and uncanceled warrants in the other fund, to the exclusion of the warrant in judgment in the first fund."

It appears from your request, and the exhibit attached thereto, that your County has outstanding warrants issued for salaries and for contingent funds for the year 1933.

You do not state in your request whether or not these warrants were within the anticipated revenue for that year or the reason why these warrants were not paid. Of course, if the warrants were in excess of the anticipated revenue for the year 1933, then under Section 12 of Article X of the Constitution they would be void. However, for the purpose of this opinion we are assuming that these warrants were legal and the County Court was acting within its powers when it issued these warrants.

In your request you speak of the registering of county warrants. Such warrants are certified by virtue of the provision of Section 12139, R. S. Missouri, 1929, as follows:

"He shall procure and keep a well-bound book, in which he shall make an entry of all warrants presented to him for payment, which shall have been legally drawn for money by the county court of the county of which

he is the treasurer stating correctly the date, amount, number, in whose favor drawn, by whom presented, and the date the same was presented; and all warrants so presented shall be paid out of the funds mentioned in such warrants, and in the order in which they shall be presented for payment: Provided, however, that no warrant issued on account of any debt incurred by any county other than those issued on account of the ordinary and usual expenses of the county, shall be paid until all warrants issued for money due from the county on account of services that are usual, and for all expenses necessary to maintain the county organization for any one year, shall have been fully paid and liquidated."

It will be noted that the above proviso clause in the above section prohibits the payment of an outstanding warrant until all warrants issued for money due from the county on account of services that are usual and for all expenses necessary to maintain the county organization for that particular year have been paid and liquidated. Following that proviso the warrants which you refer to in your exhibit could not be paid this year until all of the current expenses of the year have been paid and liquidated, then if a balance remains they may be paid as herein-after set out.

The first part of your request is whether or not a warrant will lose its priority on the register book by being reduced to a judgment. We think that this question is fairly well answered in the case of Douglas County v. Bank of Ava, 333 Mo. 1195, 1. c. 1200, wherein the court said:

"It is evident here that if the defendant bank had sued plaintiff on these county warrants drawn on and payable out of the county revenue for 1930, it would not be a complete defense to show that the county had no such funds out of which to pay same, but the status of any judgment obtained against the county on these warrants drawn on the county revenue fund would be subject to the same limitations and restrictions as to payment as the warrants themselves and could not be enforced against the deposit now in question belonging to other funds."

In this case the status of a judgment obtained on warrants was held to be the same as that of the warrant under which it was obtained. That being the case, it seems that the fact that where a warrant is issued on and a judgment obtained thereon, that the judgment would take the place of the warrant on the register book provided for under said Section 12139, supra.

In the case of Sturdivant Bank v. Stoddard County, 58 S. W. (2d) 702, 1. c. 704, the court said:

"In Isenhour v. Barton County, 190 Mo. 163, 170, 88 S. W. 759, we held that county warrants are merely evidences of indebtedness, and that the General Assembly had the power to provide, as it did by what is now section 12171, R. S. 1929, that, when any such warrant is presented for payment, if there is no money in the treasury for such purpose, the treasurer shall so certify on the back of the warrant, and shall date and subscribe the same. Section 12139, R. S. 1929 (Mo. St. Ann. Sec. 12139),

further provides that 'all warrants so presented shall be paid out of the funds mentioned in such warrants, and in the order in which they shall be presented for payment.' Also we have ruled in State ex rel. v. Hortsman, 149 Mo. 290, 295, 50 S. W. 811 (opinion disproved in some respects in State ex rel. v. Johnson, 162 Mo. 621, 633, 63 S. W. 390, but reaffirmed in this), that a judgment founded on a county warrant gives no preference over the warrant as to payment. * * * *"

In the above citation the court held that the county warrant is merely an evidence of indebtedness and that a judgment founded on such a warrant gives no preference over the warrant as to payment. In other words, the judgment takes the same classification as to payment as the warrant had.

We find questions which are similar to the ones which you have submitted discussed by the court in the case of State ex rel. v. Johnson, 162 Mo. 621, 1. c. 628:

"Three propositions are presented:

"First. Is the surplus revenue of a county, remaining after the payment of all current expenses of every kind for the year for which such revenue was levied and collected, applicable to the payment of outstanding valid unpaid county warrants for previous years?

"Second. If so, what is the lawful method of applying such payment? Must the warrants be paid in the order of their presentation and registration, or are they payable pro rata to all the outstanding indebtedness?

"Third. If such surplus is so applicable and if payable in the order of their registration, is it the duty of the treasurer to so pay them or must the county court first distribute the fund for the payment of such warrants before the treasurer can pay any of such warrants for past years' indebtedness?

"These questions must all be answered by a construction and interpretation of our statute law on the subject in the light of the Constitution of this State.

"First. A correct answer to the first proposition can only be given by keeping in view section 12 of article 10 of the Constitution, which ordains that 'no county shall be allowed to become indebted in any manner or for any purpose to an amount exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the voters thereof voting at an election to be held for that purpose; nor, in cases requiring such assent, shall any indebtedness be allowed to be incurred to an amount including existing indebtedness, in the aggregate exceeding five per centum on the value of the taxable property therein'.

"It was then anticipated that, though the county court might not issue warrants in excess of the levy for a year's current expenses, and that a creditor might rely upon the fact that his contract was within the amount of revenue levied and provided, and trust to the power of the State to enforce its taxes,

still it might happen from some unforeseen cause enough of the estimated amount of revenue might not be collected to pay all the warrants drawn against it in anticipation. Under such circumstances it has never been ruled that such a creditor's warrant was absolutely void and extinguished by the non-payment in the year in which it was drawn. On the contrary, this court has often said in no uncertain terms that it was valid and payable out of any surplus revenue in the hands of the county treasurer that might arise in subsequent years. (Randolph v. Knox County, 114 Mo. 142; Andrew County v. Schell, 135 Mo. loc. cit. 39; State ex rel. v. Payne, 151 Mo. loc. cit. 673; Railroad Co. v. Thornton, 152 Mo. 570, State ex rel. v. Allison, 155 Mo. loc. cit. 344; and on this point, Reynolds v. Norman, 114 Mo. 509.)

"Accordingly we answer the first proposition in the affirmative: that a warrant valid when issued is not rendered invalid because the revenue provided to pay it is not collected during the year for which it was issued, or is misappropriated by the officers of the county for whose act the holder of the warrant is not responsible.

"Second. We are thus brought to the second proposition: in what order are these unpaid warrants to be paid? In the order of their registration, or pro tanto, if there is not a sufficient surplus to pay all?

"This must be solved by the statutes. Section 6771, Revised Statutes 1899 (sec. 3166, R. S. 1889) of the article entitled 'County Treasurers and County Warrants,'

provides that, 'He (the county treasurer) shall procure and keep a well bound book in which he shall make an entry of all warrants presented to him for payment, which shall have been legally drawn for money, by the county court of the county of which he is the treasurer, stating correctly the date, amount, number, in whose favor drawn, by whom presented, and the date the same was presented; and all warrants so presented shall be paid out of the funds mentioned in such warrants in the order in which they shall be presented for payment. Provided, however, that no warrant issued on account of any debt incurred by any county other than those issued on account of the ordinary and usual expenses of the county, shall be paid until all warrants issued for money due from the county on account of services that are usual, and for all expenses necessary to maintain the county organization for any one year, shall have been fully paid and liquidated.'

"This statute was substantially adopted, except the proviso therein, in 1855 (R. S. 1855, p. 521, sec. 9), and was continued in General Statute 1865, page 227, section 8.

"In the revision of 1879 the proviso was added to the section for the obvious purpose of having the statute conform to the Constitution. (R. S. 1879, sec. 5370.) It is found in the same words in the Revised Statutes of 1889 as section 3166.

"This section then had been the law of this State for twenty years before the adoption of the Constitution of 1875.

Prior to that, it was not necessary that a county warrant should be drawn upon a special fund or that it should come to the holder during the year in which the indebtedness was created. What, then, was the effect of the Constitution upon this section? As was ruled in *Andrew County v. Schell*, 135 Mo. 31, and *State ex rel. v. Payne*, 151 Mo. 670, that section was modified by the Constitution to the extent that thereafter the warrants drawn by the county court in any year to meet all the necessary and current expenses for that year must first be paid in full in the order of their registration, and if a surplus was left, then the section operated on all other warrants just as it had previous to the adoption of the Constitution of 1875. In a word, that section, in so far only as it conflicted with the provisions of section 12 of article 10 of the Constitution, became inoperative by force of the Constitution as soon as it went into effect, because inconsistent therewith. But with this exception there is no such repugnancy as requires us to hold it was absolutely repealed, the rule of construction being that before it shall be construed as repealed by implication only, the two must be so repugnant that both can not stand, and, we think, with the modification we have mentioned, both can stand. Such has been the opinion of the Legislature, we think, from the fact that this section has been preserved through three revisions since the adoption of the Constitution. We conclude that this surplus, after the current expenses for the years 1895 and 1896 had all been paid, at once became subject to this general statute, section 3166, Revised Statutes 1889, (now section 12139 R. S. 1929), which provides a just and

equitable rule for the payment of the debts of the counties. The preferred right of payment according to registration is not taken away further than the changed condition wrought by the Constitution requires, and when the Constitution is read into and with this section, it merely changes the order of payment so that the funds provided for each year's expenses is primarily the fund out of which warrants drawn for those expenses are to be paid according to their presentation and registration in that year, and when they are all paid and a surplus, as in this case, remains, then it is applicable to unpaid warrants, of former years and section 6771, Revised statutes 1899 (Section 12139 R. S. 1929), provides the rule of priority just as it did before its modification by the Constitution of 1875, and the surplus is not to be distributed pro rata.

* * * * *

"It was not at all necessary for the county court to make any further appropriation of the fund before the treasurer could pay relator's warrant out of this surplus. The court is required to distribute the current tax into the different funds each year, and may, in proper cases, transfer moneys from one fund, when not needed, to another that is insufficient, but after all the warrants for any year have been paid there is no provision of law for distributing this surplus into different funds, but it is in the hands of the treasurer, as an executive officer, charged by the statute with the duty of disbursing the funds on warrants drawn by the county court, and as the warrants have been drawn, all he

has to do is to pay them in the order of their registration whenever he has money enough to take up a warrant, as the law makes no provision for a partial payment thereon, but requires him to take up the warrant itself as the only voucher the law will recognize when he comes to make his settlement for payments thereon."

Under Class 6 of Section 5 of the County Budget Act it is provided in Laws of Missouri, 1933, page 344, in part as follows:

"* * * Nor may any warrant be drawn or any obligation be incurred in class six until all outstanding lawful warrants for prior years shall have been paid. * * *"

It will be noted that the lawmakers under the Budget Act by the foregoing section have provided for the payment of warrants such as you have described out of Class 6. This section further shows that it was the intent of the lawmakers to carry out the constitutional provision and proviso clause of said section 12139 by providing that the current expenses of the county paid out of the first five classes of said section 5 should be paid before outstanding warrants are paid and, as stated above, judgments would come within the same classification as outstanding warrants.

In the Johnson Case, supra, the court has stated that these funds may be transferred from one fund to another, but after all the warrants for any year have been paid, there is no provision for distributing this surplus into different funds. The surplus is then in the hands of the treasurer and all the treasurer has to do is to pay them in the order of their registration. So the warrants which you describe in your exhibit, together with the judgment obtained on these warrants, if they

are legal warrants, would be payable in the order in which they are registered on the register book mentioned in said Section 12139.

CONCLUSION

From the foregoing, and answering your first question, will say that a judgment debtor who obtained a judgment on a county warrant must look to his judgment for payment on the same because the county warrant is only evidence of the obligation and the judgment is conclusive of it. We are further of the opinion, however, that the judgment retains the same status as a claim on the registered warrant that the warrant had, and that the judgment may be paid if funds are available in any subsequent year in the order in which it appears on the register warrant book.

Answering your second question, will say that since the warrant is merged into the judgment and that the judgment holds the same place on the warrant registration book that the warrant has, of course it would be the duty of the treasurer to hold the money in reserve for the payment of this judgment. We are further of the opinion that the warrant record is not automatically cancelled, but the record should show that the judgment has been obtained on this particular warrant which takes the place of the warrant.

We are further of the opinion that since the judgment takes the place of the warrant and since it is the duty of the treasurer to pay these old obligations in the order in which they are registered in his warrant register, that the treasurer would not be authorized to pay warrants out of the order in which they are registered, but it would be the duty of the county

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treasurer to hold back a sufficient amount to pay the judgment on any warrant before he pays a warrant on a judgment based on a warrant which is registered at a later date.

Respectfully submitted,

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