

AN INQUIRY INTO THE LEGAL ASPECTS OF  
THE PREPARATION OF BUDGETS FOR  
POLITICAL SUBDIVISIONS OF OKLAHOMA

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POLITICAL SUBDIVISIONS OF OKLAHOMA

By

NOLAN EUGENE WILLIAMS

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APPROVED BY:

George B. M. Cowen  
Chairman, Thesis Committee

E. Burl Austin  
Member of the Thesis Committee

P. P. Harrison  
Head of the Department

W. C. M. Tolson  
Dean of the Graduate School

232722

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## CHAPTER I

### THE PROBLEM AND DEFINITIONS OF TERMS USED

A municipal budget is a legal and accounting device for controlling both the incomes (revenues) and expenditures of a municipality. The control is exercised by placing limitations upon the powers of the elected and appointed officials. It limits their powers to levy and collect taxes and other revenue, and it limits their powers to spend the funds so collected. These limitations are written into the laws of the state and are known generally as the budgetary laws.

The budgetary laws of Oklahoma and the practical application of these laws have been developed over a long period of time by trial and error. As a result of this continual change in the statutes and their interpretation, legal budget preparation is widely scattered throughout the various sections of the statutes and the case records.

#### I. THE PROBLEM

Statement of the problem. This study investigates the legal aspects of budget procedure from the time the preliminary budget estimates are prepared until their final determination and adoption as the official budgets. It attempts to explain the functions of the various boards and officials in connection with this process and to show their legal relationship.

No attempt was made to develop the discussion past the stage in budget procedure where the budgets are actually put into operation by the governing boards; only the preparation



phase of budget procedure is given.

Within the scope and limitations presented above, the more exact purpose of this study is (1) to review many of the laws, court cases, and general practices relating to municipal budget preparation in Oklahoma; (2) to show the various stages through which a municipal budget must pass before it becomes official; and (3) to present an analysis showing some of the strong and weak points of municipal budget preparation in Oklahoma.

Importance of the study. For many years the Oklahoma State Board of Accountancy has required accountants wishing to become certified in Oklahoma to pass, in addition to the American Institute examination, an examination relating to Oklahoma governmental accounting. In general, governmental accounting in Oklahoma is like governmental accounting in other states and there is adequate material available for a thorough study of the mechanics of governmental accounting; however, the field of budget preparation is a very important part of Oklahoma governmental accounting and there is no study available with details complete enough to prepare the accountant for this part of the examination. Without such a study, a long and tedious search of the Oklahoma law and case history, or reliance upon information passed on orally, is necessary.

The budget for a municipality affects all persons living within the corporate limits of the municipality and it is their duty and privilege to understand the contents and purpose of the budget well enough to see that the governing board concerned executes it properly.

## II. DEFINITIONS OF TERMS USED

Municipal and municipality. Strictly speaking, municipal means that which relates to a city; more generally, it means that which pertains to a state.<sup>1</sup> The Constitution of Oklahoma has used the term municipality in this broad sense to mean any of the various political subdivisions of the state.<sup>2</sup> A municipality may be either a town, city, school district, or a county. Unless otherwise indicated by the content of a particular section, municipal and municipality will be used, throughout this study, to refer to any of the political subdivisions mentioned.

Governing board. The term governing board as it is related to making municipal budgets was defined by law as follows:

The term governing board as used in this Act shall mean the council of a city; the town council or board of trustees of a town; the board of education of an independent school district; any school district board; and the board of county commissioners for and on behalf of townships, counties, and dependent school districts.<sup>3</sup>

Budget. The fact that a budget is a legal and accounting control device is explained above.<sup>4</sup> Actually a budget does not exist until after the budget estimates are finally approved

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<sup>1</sup> William C. Cochran, The Students' Law Lexicon, p. 183.

<sup>2</sup> Const. Art. X, Sec. 28.

<sup>3</sup> 62 Okl. St. Ann., Sec. 348.3.

<sup>4</sup> Above, p. 1.

and are ready to be put into operation; however, in general practice and in the laws of Oklahoma, the budget estimates and statements for a municipality used in final determination of "the budget" are usually referred to as a budget. Budget is used throughout this study to refer to both the budget estimates and the final budget. The meaning the word is intended to convey should be recognized from its context.

Fiscal Year. The tax year for a municipality was established by the courts which stated, "Under Const. Art. X, Sec. 1, 2, and section 252 of title 68, the tax year begins July 1, and the taxes for any year mean the taxes for the year beginning July 1 of the year mentioned."<sup>5</sup> The fiscal year is the same as the tax year.

Levy. Levy is used to mean the amount, expressed in mills, authorized by the county excise board to be collected by ad valorem taxation. The assessed valuation of a taxpayer's property subject to ad valorem taxation multiplied by this millage rate produces the ad valorem tax liability of the property owner.

Fund. The National Committee on Municipal Accounting defined fund as follows:

A fund is a . . . sum of money or other resources (gross or net) set aside for the purpose of carrying on specific activities or attaining certain objectives in

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<sup>5</sup> City State Bank of Oklahoma City v. Stone, 59 Okl. ss8 P. 1168.

accordance with specific regulations, restrictions, or limitations and constituting an independent fiscal and accounting entity.<sup>6</sup>

Appropriation. The term appropriation is used to mean that part of the estimate of surplus authorized for a specific purpose. This authorization is made by the county excise board.

Actual cash surplus. Actual cash surplus was defined by law<sup>7</sup> to be an excess of actual cash on hand over and above all legal obligations. Taxes in process of collection may not be considered in determining the actual cash surplus for any fund for any year or years.

### III. PREVIEW OF THE REMAINDER OF THE THESIS

In a study of this type it is customary to present a preview of the organization of the remainder of the study at this point; however, a general summary of the body of the thesis, without reference to the specific chapters, will serve to acquaint the reader with the scope and nature of the problem. Such a statement should make it easy for the reader to see at a glance the relationship between the various parts of the thesis.

The various subdivisions of the state of Oklahoma were created to perform functions necessary for the general welfare of the people. The time and organization required to perform

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<sup>6</sup> W. A. Patton, editor, Accountants' Handbook, p. 1278.

<sup>7</sup> 68 Okl. St. Ann., Sec. 298.

these functions make it necessary for the electors of a particular subdivision to delegate the authority to perform these functions to elected and appointed officials. The bugetary laws of Oklahoma are constructed as a system of checks and balances in order to insure the proper use of this authority. This study is concerned with the rules, regulations, and general practices involved in that portion of the bugetary laws relating to preparation of the municipal budgets.

When the budgets for the various municipal subdivisions become official, they serve as a limitation, enacted by the people, on the amount of revenue, the way it may be raised, and the manner in which it can be used.

Certain steps are preliminary to the preparation of budgets. Special elections may be held for additional levies for building funds of municipalities and for support of the school districts. A special election must also be held before contracting debts that are to be retired by a sinking fund.

The governing boards of the municipalities prepare financial statements and estimates of needs for the various funds of their subdivisions. These budget estimates (called budgets) must be filed in a certain manner with the county excise board of each county.

The county excise board of a particular county examines the budgets of that county and the subdivisions therein, and computes the levy needed to raise the funds needed to be furnished by ad valorem taxation in order to put the budgets into operation. In order to make this computation, the excise board

must have knowledge of the assessed valuation of all the taxable property in the county and other subdivisions.

The determination of the final assessed valuation of the property within a county is made in a certain process. The county assessor prepares the assessment rolls. These rolls or abstracts thereof are sent to the county board of equalization, the Oklahoma tax commission, and the state board of equalization before the values are finally determined. When the state board of equalization finally approves the assessed valuations, and when it certifies them to the county assessor, along with the valuations for railroads and public service corporations, these valuations are certified by the county assessor to the county excise board. The excise board may then make the computation of the levies, and order the county assessor to extend the levies on his tax rolls so that the county treasurer may know the amount of tax due from each taxpayer.

When the levies have been made, the excise board files the budgets with the state auditor and the county clerk. Any taxpayer may examine and protest these budgets through the court of tax review within a certain protest period. At the expiration of the protest period, or the final court determination of a protested budget, the budgets become final and are put into operation by the governing boards concerned.

## CHAPTER II

### PRELIMINARY STEPS IN PREPARATION OF THE BUDGETS

There are countless details, rules, and regulations involved in the preparation of a budget for a municipality; however, only a general summary of the preliminary steps, the governing boards involved, and the funds for which budgets are made will be given in this chapter.

#### I. SPECIAL ELECTIONS FOR EXCESS LEVIES

Building fund. The Constitution of the State of Oklahoma provides for a special election for a building fund levy as follows:

For the purpose of erecting public buildings in counties, cities, or school districts, the rates of taxation herein limited, may be increased, when the rate of such increase and the purpose for which it is intended shall have been submitted to a vote of the people, and a majority of the qualified voters of such county, city, or school district, voting at such election, shall vote therefor: Provided, That such increase shall not exceed five mills on the dollar of the assessed value of the taxable property in such county, city, or school district.<sup>1</sup>

This constitutional provision for a building fund should not be confused with the provision for a sinking fund as explained later.<sup>2</sup> The excess levy for the creation of a building fund is available to counties, cities, towns, and school districts. The governing boards of these political subdivisions are responsible for the conduct of the elections. The use of

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<sup>1</sup> Const. Art. X, Sec. 10.

<sup>2</sup> Below, p. 15.

a building fund under this section is not available to separate schools, but a provision for building funds for separate schools is included in the Constitution as a mandatory levy.<sup>3</sup> If a municipality votes this excess levy, it is added to and collected with the ad valorem tax for general fund purposes; however, separate records must be maintained.<sup>4</sup>

Indebtedness of political subdivisions. Before a political subdivision of the State can become indebted in an amount exceeding the income and revenue of any year, there must be a special election with the assent of three-fifths of the voters voting.<sup>5</sup> Then, the total debt, including existing debt, is limited to five per centum of the valuation of the taxable property within the subdivision.<sup>6</sup> The subdivision must then provide for collection of an annual tax sufficient to pay the interest on the indebtedness and to constitute a sinking fund for the payment of the principal within twenty-five years.

Indebtedness for purchase, construction, or repair of public utilities by a city or town is exempt from the above section.<sup>7</sup> This means that there is no debt limitation for a city or town with regard to public utilities fully owned by the city or town as long as a sinking fund is maintained

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<sup>3</sup> Const. Art. X, Sec. 9.

<sup>4</sup> 62 Okl. St. Ann., Sec. 331.

<sup>5</sup> Const. Art. X, Sec. 26.

<sup>6</sup> Loc. cit.

<sup>7</sup> Const. Art. X, Sec. 27.



sufficient to pay the interest and principle<sup>AL</sup> of the debt. Parks,<sup>8</sup> electric light plants,<sup>9</sup> sewers,<sup>10</sup> convention halls,<sup>11</sup> and fire stations<sup>12</sup> have been held within the meaning of public utilities as here used. Street improvements<sup>13</sup> are not public utilities and not within the limits of this section.

School district. In order to qualify for the additional fifteen mill levy provided for school districts by the Constitution,<sup>14</sup> there must be a special meeting called by the school district board or board of education of independent school districts. If the excess levy receives a majority vote of those voting at such a meeting, it is the duty of the governing board to attach a certificate of the vote to the estimate of needs.<sup>15</sup>

There is a separate statute<sup>16</sup> dealing with the excess levy for independent school districts containing a city of the first class. The board of education prepares an estimate on or before the second Tuesday of May, and if the assessed

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<sup>8</sup> Schmoldt v. Oklahoma City, 144 Okl. 208, 291 P. 119.

<sup>9</sup> Williams v. City of Norman, 85 Okl. 230, 205 P. 144.

<sup>10</sup> State v. Millar, 21 Okl. 448, 96 P. 747.

<sup>11</sup> State v. Barnes, 22 Okl. 191 P. 747.

<sup>12</sup> Oklahoma City v. State, 28 Okl. 116, 111 P. 319.

<sup>13</sup> Dingman v. City of Sapulpa, 27 Okl. 116, 111 P. 319.

<sup>14</sup> Const. Art. X, Sec. 9.

<sup>15</sup> 68 Okl. St. Ann., Sec. 322.

<sup>16</sup> 78 Okl. St. Ann., Sec. 803.

valuation of any school district for the current fiscal year is not sufficient, by a levy of five mills, to support the school district, they must call a special election. Publication of the estimate and notification of the election must be made together in some newspaper in the city and school district for four consecutive issues, if in a daily paper, and two consecutive issues, if in a weekly paper.<sup>17</sup> The first page of the budget forms for school districts<sup>18</sup> and boards of education<sup>19</sup> has a place for certification of publication and election results. The county excise board is authorized to call a special election for voting an excess levy in any school district where the budget as submitted requires a greater levy than that already authorized by law.<sup>20</sup> This election call by the excise board can only be made when the governing boards of the school districts have failed to hold the election as provided by law.

## II. THE GOVERNING BOARDS AND THE DIFFERENT BUDGETS

Board of Education. The responsibility for the preparation of the various budgets for an independent school district lies with the board of education of that district.<sup>21</sup> A budget must be prepared for the general fund for both the majority

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<sup>17</sup> Loc. cit.

<sup>18</sup> S.E. & I. Form 1405-1947.

<sup>19</sup> S.E. & I. Form 1404-1946.

<sup>20</sup> 68 Okl. St. Ann., Sec. 322.

<sup>21</sup> 68 Okl. St. Ann., Sec. 286.

schools (usually white students) and the minority schools within the school district. If the school district has obligations requiring a sinking fund,<sup>22</sup> and if it has a building fund,<sup>23</sup> separate budgets will have to be made for each of them. The general fund and building fund budgets may be combined<sup>24</sup> while the budget for the sinking fund is on a separate form.<sup>25</sup>

School district board. The school district board is required to file a budget for the general fund for the majority school of a dependent district and any sinking fund or constitutional building fund of the majority schools within the district.

Cities and towns. The mayor and council of each city (or the officers having like powers in any city having a charter form of government) and the board of trustees of an incorporated town must prepare budgets for the general fund.<sup>26</sup> They must also prepare budgets for the sinking fund and building fund if these funds exist for the city or town. All three of these budgets may be presented within one form.<sup>27</sup>

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<sup>22</sup> Loc. cit.

<sup>23</sup> Above, p. 8.

<sup>24</sup> S.E. & I. Form 1404-1946.

<sup>25</sup> S.E. & I. Form A-650-1946.

<sup>26</sup> 68 Okl. St. Ann., Sec. 286.

<sup>27</sup> State Examiner and Inspector's Form No. 1402, Revised 1947.

County commissioners. The board of county commissioners must prepare budgets, if such fund exists, for the general fund, sinking fund, and the building fund of the county, and the general fund for dependent separate schools. The general fund for the county will encompass, among other things, funds for crippled children and the county audit. It may include funds for a governmental budget account, highway levy budget account, free fair budget account, free fair improvement budget, free fair additional improvement budget, library budget account, public health budget account, tick eradication account, bovine T.B. budget account, and a farm and home demonstration budget account.<sup>28</sup>

A good summary for the general points about the governing boards with relation to preparation of the budgets is given in the statutes, which say, in part:

Each board of county commissioners, the mayor and council of each city, (or the officers exercising like power in any city having a charter form of government), the board of trustees of each incorporated town, the directors of each township and the board of education of each independent school district, shall meet on the first Monday in July of each year, and the directors of each dependent school district shall meet on the second Tuesday in July of each year, and they shall, respectively, make, in writing, a financial statement, showing the true fiscal condition of their respective municipalities as of the close of the previous year, and an itemized statement of estimated needs and probable income from sources other than ad valorem tax of each thereof, for expense for the current fiscal year.<sup>29</sup>

County clerk. It is the duty of each county clerk, as

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<sup>28</sup> 62 Okl. St. Ann., Sec. 331.

<sup>29</sup> 68 Okl. St. Ann., Sec. 286.

secretary of the county excise board of his county, to procure and furnish, at the expense of his county, the budget forms required for the budget making bodies above.<sup>30</sup>

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<sup>30</sup> Laws 1947, P. 421, Sec. 1.

### CHAPTER III

#### THE SINKING FUND AND JUDGMENTS AGAINST A MUNICIPALITY

The sinking fund of a municipality is created for debt retirement. Since a levy must be made to create the sinking fund and the law prescribes specific limitations on the way the fund is to be used, a review of the sinking fund and its uses is pertinent to study of budget preparation.

Judgments against a municipality must be paid for out of the sinking fund. The manner of obtaining judgments against a municipality and the way in which the municipality levies for and pays the judgments will be given.

#### I. THE SINKING FUND

Creation of a sinking fund. The authority and requirement for the creation of a sinking fund by a municipality is found in the Constitution of Oklahoma, which provides as follows, in part:

Provided, That any county, city, town, township, school district, or other political corporation, or subdivision of the State, incurring any indebtedness, requiring the assent of the voters as aforesaid, shall before or at the time of doing so, provide for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof within twenty-five years from the time of contracting the same.<sup>1</sup>

The limitation of indebtedness of a subdivision of Oklahoma, as mentioned before,<sup>2</sup> does not apply to purchase, con-

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<sup>1</sup> Const. Art. X, Sec. 26.

<sup>2</sup> Above, p. 9.

struction, or repair of public utilities by a city or town; however, this five per centum limitation does apply to all other political subdivisions.

The Oklahoma law<sup>3</sup> also provides that when any political subdivision votes any bonds, the bonds must mature in equal annual installments, beginning not less than two and more than five years after their date of issue. The denomination of the bonds must be one hundred dollars or multiples thereof, and they must mature within twenty five years. The largest bond cannot exceed one thousand dollars. The law allows an exception in the case of the last maturing installment which may be less than the annual amount, and the last numbered bond may be issued in an odd amount.

Old and new sinking fund. In 1936, the legislature passed a section<sup>4</sup> of the statutes which specifically exempts homesteads from all forms of ad valorem taxation to the extent of one thousand dollars of the assessed valuation. The section also provided that all assessments, levies, encumbrances, and other contract obligations incurred or made prior to the taking effect of the Act, should not be affected or impaired. The effective date of the act was Jan. 1, 1937.<sup>5</sup> This means that homesteads have to pay the levy for the sinking fund for debts

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<sup>3</sup> 62 Okl. St. Ann., Sec. 353.

<sup>4</sup> 68 Okl. St. Ann., Sec. 34, Laws 1936 Ex. Sess., p. 52, Sec. 2.

<sup>5</sup> 68 Okl. St. Ann., Sec. 35.

prior to Jan. 1, 1937,<sup>6</sup> because there was no homestead exemption existing then. After that date, the homestead exemption is applied against the total assessed valuation to find the base for ad valorem levy. The levy from which the homesteads are not exempt is called the old sinking fund levy and the levy that exempts the homesteads is the new sinking fund levy. This division must be carefully indicated in the budget and in the tax rolls.

Levy for the sinking fund. It is the duty of the officers of each municipal corporation in the State of Oklahoma authorized to levy taxes to make a levy each year for a sinking fund. This levy, along with cash actually on hand and investments in the sinking fund, excluding taxes in the process of collection, must be sufficient to pay all the bonded indebtedness of the municipality coming due the following years, one year's interest on all outstanding bonds, and one-third of the original outstanding judgments against the municipality.<sup>7</sup> If the situation should exist that less than one-third of the judgments are due, the levy should be, with respect to judgments, only for the amount due. This situation might arise when several judgments against a municipality have been granted during different fiscal years.

If the proper governing board fails to request an appro-

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<sup>6</sup> Practice seems to hold January 8, 1947 as the dividing date; however, no specific statute or case reference was found substantiating this date.

<sup>7</sup> 62 Okl. St. Ann., Sec. 431.



priation for sinking fund purposes in the estimate, or if such request is for an insufficient amount, it is the duty of the county excise board to make an estimate for sinking fund purposes for that municipality and publish it in the usual manner.<sup>8</sup>

Additional levy for the sinking fund. If any municipal corporation fails to make a levy which could have been validly made, for any judgment, bonds, or interest coupons, it is authorized to make, in the following years, an additional levy which will raise a fund sufficient to pay the obligations when due.<sup>9</sup> Thus, if levies have been made in three fiscal years for the payment of a judgment, and the judgment is not fully paid by the end of the third fiscal period, an additional levy may be made the fourth year for the remaining balance.

The law<sup>10</sup> provides that if a deficit should develop in the sinking fund, it is to be eliminated by additional levies until the maturity dates of the indebtedness arrive. This has been used in practice to mean the deficit is to be eliminated by additional levies over the remaining life of the shortest maturing bond issue.

In computing the amount of levy or additional levy, an allowance of ten per cent must be made for delinquent taxes.<sup>11</sup> This section of the law reads, "In making levies under the

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<sup>8</sup> 68 Okl. St. Ann., Sec. 291.

<sup>9</sup> 62 Okl. St. Ann., Sec. 431.

<sup>10</sup> 62 Okl. St. Ann., Sec. 431.

<sup>11</sup> Loc. cit.

provisions of this Act an allowance of ten (10%) per cent for delinquent taxes shall be added."<sup>12</sup> This means that when the net amount to be provided by the levy is determined, ten per cent of this net must be added to arrive at the amount of the gross tax or tax assessed.

Constitutional limitation of the uses of the sinking fund.

The use of the sinking fund and the order of payment is given by the Constitution as follows:

Counties, townships, school districts, cities, and towns shall levy sufficient additional revenue to create a sinking fund to be used, first, for the payment of interest coupons as they fall due; second, for the payment of bonds as they fall due; third, for the payment of such parts of judgments as such municipality may, by law, be required to pay.<sup>13</sup>

This order of payment is repeated in the statutes;<sup>14</sup> however, in the early life of the sinking fund, there will only be interest payments.

II. JUDGMENTS AGAINST A MUNICIPALITY

Manner of obtaining money judgments. Cases for money judgments against a municipality usually arise out of the failure of the municipality to pay some of its outstanding warrants when they become due and are presented for payment. Therefore, a general review of claims and warrants is desirable here.

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<sup>12</sup> Loc. cit.

<sup>13</sup> Const. Art. X, Sec. 28.

<sup>14</sup> 62 Okl. St. Ann., Sec. 435.

Any claim for money due from any county, city or town, must be itemized in detail and filed with the proper authority not less than five days before the meeting of the body for the purpose of approving the claims.<sup>15</sup> These claims, if valid and within the appropriation for such purpose, will be reviewed and approved and warrants against the municipality will be issued.

Any warrant issued in payment of obligations of counties, school districts, cities, towns and any other political subdivision of Oklahoma becomes due one year after the close of the fiscal year in which it was issued.<sup>16</sup> Thus, if a warrant were issued on June 30, 1947, it would become due on July 1, 1948; however, if the warrant had been issued one day later, July 1, 1947, it would not become due until one year after the close of the 1947 fiscal year, or July 1, 1949. This example shows how two warrants with only one day difference in their dates could have due dates one year apart.

The due date of a warrant is especially important because the statute of limitations for warrants begins to run from its due date. Action on any unpaid warrant may be commenced in any court of competent jurisdiction after the warrant becomes due and has been presented for payment and payment has been refused.<sup>17</sup> Action must be commenced by the filing of suit and service or

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<sup>15</sup> 62 Okl. St. Ann., Sec. 301.

<sup>16</sup> 62 Okl. St. Ann., Sec. 482.

<sup>17</sup> 62 Okl. St. Ann., Sec. 482.

summons within five years from the due date or the warrant is barred forever.<sup>18</sup> The defendant municipality has the advantage of this limitation regardless of whether or not it asserts it as a defense. Since the limitation period is five years after the due date, the least possible lapse of time from the date of issue until it is barred by the statute of limitations is at least a part of a day over six years and the greatest possible lapse of time would be seven years or a fraction of a day less. Referring to the examples given above,<sup>19</sup> the warrant issued on June 30, 1947 would be barred by statute on July 1, 1953, or six years and one day after issue. The warrant issued on July 1, 1947 would be barred by statute on July 1, 1954, or seven years after the date of issue. The fact that the warrant becomes due one year after the close of the fiscal period in which it was issued and the five year limitation begins to run at the due date, makes the limitation period six years after the close of the fiscal period in which the warrant was issued.

The 1947 Laws<sup>20</sup> have sought to eliminate part of the probability of judgments against a municipality arising out of contracts by providing that an officer of the municipality in charge of the appropriation ledger must certify, in a specific form, that encumbrances have been recorded in the appropriation ledger and that there is an unencumbered balance available to

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<sup>18</sup> Loc. cit.

<sup>19</sup> Above, p. 20.

<sup>20</sup> Laws 1947, p. 390, Sec. 1.

cover purchase orders and contracts. The clerk of each municipality is charged with keeping the record of appropriations made by the county excise board for each department of government.

With regard to court of competent jurisdiction mentioned above,<sup>21</sup> the Court of Record (the district and higher courts) has exclusive jurisdiction in all actions for money judgment against county, city, town, board of education, school district or any of the subdivisions of Oklahoma.<sup>22</sup>

Manner of paying money judgments. The courts<sup>23</sup> have held that judgments against a municipality in Oklahoma are sinking fund obligations and are paid by three annual levies, or may be paid out of the sinking fund and the fund reimbursed by three annual levies. Thus, if actual cash surplus exists in the sinking fund, a judgment may be prepaid. If a judgment is prepaid, it is the duty of the proper officers to make the levies to pay the judgment just as if it had not been paid. Then they pay the amount collected into the sinking fund.<sup>24</sup>

As mentioned before,<sup>25</sup> the levy for the sinking fund must be large enough to pay one third of the original outstanding

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<sup>21</sup> Above, p. 20.

<sup>22</sup> 62 Okl. St. Ann., Sec. 365.1.

<sup>23</sup> State ex rel. Crane Co. v. Goerke, 191 Okl. 1, 126 P. 2d 1005.

<sup>24</sup> 62 Okl. St. Ann., Sec. 435.

<sup>25</sup> Above, p. 17.

judgments. The Law<sup>26</sup> also provides that when the levy is made for a portion of a prepaid judgment it is not to include a levy for interest, other than for interest that was actually paid in excess of the amount already provided for by a tax levy.

No money judgment against any municipal subdivision of the State of Oklahoma may be paid until the first third of the judgment is spread on the sinking fund budget, and the levy or provision made has become final.<sup>27</sup> This means that one third of the judgment must be provided for by the levy and a judgment cannot be paid until it has in that manner been included in the budget. A judgment is to be paid within thirty days after the final determination of a protested budget in which an estimate for the judgment is included, or after the forty day protest period if the budget goes unprotested.

When the judgment becomes final the clerk of the court that granted the judgment must transmit a certified copy of the journal entry of the judgment to the clerk of the municipality, the treasurer of the municipality, and the secretary of the county excise board.<sup>28</sup> This same clerk must file with the treasurer of the defendant municipality a claim itemizing the judgments to be paid. The form of the claim is prescribed by the state examiner and inspector.<sup>29</sup> The treasurer of the

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<sup>26</sup> 62 Okl. St. Ann., Sec. 365.6.

<sup>27</sup> 62 Okl. St. Ann., Sec. 365.5.

<sup>28</sup> 62 Okl. St. Ann., Sec. 365.2.

<sup>29</sup> 62 Okl. St. Ann., Sec. 365.5.

municipality then audits his sinking fund for the actual cash available for the payment of judgments, and approves the claim for the amount available and transfers it to the clerk of the municipality. The county clerk acts for counties and dependent school districts. The clerk audits the claim, approves it, and sends it to the treasurer. The treasurer pays the judgment out of the sinking fund to the clerk of the Court of Record that rendered the judgment. The court makes the distribution to the plaintiff.<sup>30</sup>

### III. SUMMARY OF THE SINKING FUND.

The Constitution of Oklahoma requires a sinking fund for debt retirement. The homestead exemption law may cause a municipality to have both an old sinking fund and a new sinking fund. A levy for the sinking fund must be made each year to pay the interest for one full year on all outstanding indebtedness, the bonds at maturity, and one third of the judgments outstanding. Additional levies may be made for judgments that are not fully paid the third year and for deficits in the sinking fund.

Warrants of a municipality are due one year after the close of the fiscal year in which they were issued and the statute of limitations runs for a five year period from the due date. Therefore, unpaid and unprotested warrants are barred six years after the close of the fiscal year in which they were issued.

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<sup>30</sup> Loc. cit.

Suit for money judgment against a municipality in this State must be brought in the Court of Record, and the rules with regard to the order of payment of money judgments are carefully outlined in the statutes.



## CHAPTER IV

### THE COUNTY EXCISE BOARD AND THE MUNICIPAL BUDGET

An understanding of the operation of the county excise board with respect to levies is a very important part of a knowledge of municipal budget procedure in Oklahoma. The county excise board is the governing body which must examine every municipal budget, make corrections or require the correction of the budgets, and authorize the levy for the operation of the budgets. It is the duty of the excise board to compute the levies by the tax formula provided by law and to make the apportionment of the levies according to the Constitution and the statutes of Oklahoma.

This chapter traces the movement of the budgets to the excise board and the excise board's action with respect to the budgets. The organization and membership of the county excise board and its order of procedure are also given.

#### I. ORGANIZATION AND DUTIES OF THE COUNTY EXCISE BOARD

Publication and filing of budgets with the county excise board. Each board of county commissioners, the mayor and council of each city, the board of trustees of each incorporated town, and the board of education of each independent school district must meet on the first Monday in July of each year and each must prepare budgets.<sup>1</sup> These budgets must each

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<sup>1</sup> 68 Okl. St. Ann., Sec. 286

consist of a financial statement, showing the true financial condition of the municipality at the close of the previous fiscal year, and an itemized statement of estimated needs and probable income from sources other than ad valorem taxes. The directors of each dependent school district must prepare a like budget; however, their meeting time is on or before the second Tuesday of July.<sup>2</sup> It should be here recalled that the time of preparation of these budgets comes after the authorization for excess levy by popular vote as mentioned before.<sup>3</sup> These estimates and the rules of publication are not to be confused with the estimates and publication that must take place at the time of a special election for an excess levy. As mentioned before,<sup>4</sup> the forms for the preparation of these financial statements and estimates of needs must be provided by the county clerk as the secretary of the county excise board. The content of the form is prescribed by the state examiner and inspector.

The Law<sup>5</sup> requires the financial statement to be supported by schedules or exhibits to show the amount of all receipts and disbursements for the past fiscal period. They must be sworn to by the governing board as being true and correct. The statement of estimated needs must be itemized so as to

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<sup>2</sup> 68 Okl. St. Ann., Sec. 286.

<sup>3</sup> Above, p. 8

<sup>4</sup> Above, p. 13.

<sup>5</sup> 68 Okl. St. Ann., Sec. 286.

show, by classes: first, the amounts necessary for the current expenses of the municipality; second, the amount required by law to be provided for sinking fund purposes; third, the probable income that will be received from all sources other than ad valorem taxes.<sup>6</sup> The budget for the general fund, the sinking fund, and any special fund may be on separate forms if so provided by the state examiner and inspector; however, all the information mentioned here and information listed by other statutes pertaining to other funds must be gathered by or for the governing boards and incorporated in the budgets.

The forms required for each municipality by the state examiner and inspector are vastly different in detail and content. These forms are reorganized and changed frequently to meet different situations; however, they must always contain the information mentioned.<sup>7</sup> Due to the vast amount of detail required in these forms, no attempt was here made to explain each schedule and exhibit. A detailed knowledge of the content and the procedure in filling in these forms is not necessary to a general understanding of municipal budget procedure; however, an accountant who practices in the field of governmental accounting must, by study and long experience, acquire an exacting knowledge of the requirements of these forms. The detailed nature of a form for a city may be illustrated by the

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<sup>6</sup> Loc. cit.

<sup>7</sup> Above, p. 26.

1947-48 form,<sup>8</sup> which contains twenty-six exhibits and five affidavits and certifications. The printed forms and material cover twelve large pages. Space is provided for, among other things, the estimate of needs and financial statements for the sinking fund, the general fund, and a building fund. A vastly simplified illustration of a budget for the general fund of a city is given in Figure 1.

Each financial statement and estimate of needs for county, city, town, and board of education must be published in some newspaper in the county and an affidavit showing the publication must be attached to the budgets when they are filed, or within five days thereafter.<sup>9</sup> The publication has to be in some newspaper of general circulation in the county and in the city, in the case of the independent school district. Such publication must be made in one issue, if published in a weekly newspaper, and in two consecutive issues, if published in a daily newspaper. If there is no newspaper published in the municipality, five copies of the statement and estimate must be posted in public places in the municipality, and the time of the posting is within five days after the meeting of the governing board that prepared the budget. This publication or posting must in each case be made by the board or authority making the estimate. Special notice should be given to the fact that if a certification of publication is not attached

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<sup>8</sup> State Examiner and Inspector's Form No. 1402, Revised 1947

<sup>9</sup> 68 Okl. St. Ann., Sec. 286.

## BALANCE SHEET

June 30, 1942

Cash	\$ 11,100	Warrants Payable	\$ 5,040
1941 Taxes Receivable	\$ 4,400	Interest on Warrants	60
Less Reserve	<u>400</u>	Surplus	<u>10,000</u>
	\$ <u>15,100</u>		\$ <u>15,100</u>

## Schedule A -- Budget Summary

Appropriations (See Schedule C) \$ 134,000

## Revenues:

Taxes (net)	\$ 16,000	
Estimated Revenue (Other)	108,000	
Surplus	<u>10,000</u>	\$ <u>134,000</u>

## Schedule B -- Estimated Revenue

1942 Taxes (Gross)	\$ 17,600	
Less Reserve	<u>1,600</u>	\$ 16,000
Estimated Revenue (Other)		108,000
(This item would be detailed)		
Surplus		<u>10,000</u>
		\$ <u>134,000</u>

## Schedule C -- Appropriations

Appropriations		\$ <u>134,000</u>
Mayor and Council	\$ 3,000	
City Clerk, Treasurer, etc.	8,000	
Police Department	9,000	
Fire Department	14,000	
Street Department	22,000	
Water Department	54,000	
Health and Sanitation	9,000	
General Government	<u>15,000</u>	\$ <u>134,000</u>

FIGURE 1

BUDGET FOR A CITY GENERAL FUND

to the budget at the date of filing, it may be attached at any time within five days.<sup>10</sup> Thus, a budget might go on file with the county excise board before it has been published, but publication must be made within the five day period.

With respect to the filing of the budget with the county excise board, the law<sup>11</sup> is explicit. The financial statements and estimates of all counties must be filed with the county excise board not later than July 10, of each year. Incorporated towns must file their budgets with the county excise board not later than July 15, of each year. Cities must file their budgets by July 20, and dependent school districts must file their budgets by July 25. All independent school districts have until July 30, of each year to file their budgets with the county excise board. Two complete copies of the financial statement and estimate of needs must be filed with the county excise board. The county clerk is secretary and clerk of the county excise board,<sup>12</sup> and filing with the county excise board means filing with the county clerk as secretary of the county excise board. One section of the Oklahoma Statutes refers to this act of filing with the county excise board as follows:

After the officers of the several municipal subdivisions of the State, constituting the budget making bodies of such Subdivisions, including counties, cities, towns, school districts and townships, shall have made

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<sup>10</sup> Above, p. 29

<sup>11</sup> 68 Okl. St. Ann., Sec. 286.

<sup>12</sup> 68 Okl. St. Ann., Sec. 15.38.

and filed their budgets as required by existing laws with the County Clerks . . .<sup>13</sup>

Structure of the county excise board. The county excise board is composed of the same members as the county board of equalization and the county clerk is the secretary and the clerk of the board.<sup>14</sup>

Each county in the state has a county excise board which is composed of three members. The Oklahoma tax commission, the district judge, and the board of county commissioners each appoints one member of the county excise board. In counties where there are two or more district judges, a majority of the district judges is necessary to the appoint the second member above. Their tenure of office is co-terminus with that of the county commissioners. To qualify for appointment to the county excise board, a person must be a freeholder of the county, and he can not be appointed if he has been an officer of the state or a municipal subdivision of the state within the past two years. One member of the board must live in the county seat of the county which the excise board serves. The county clerk must serve as secretary and clerk without any additional compensation.<sup>15</sup>

*to here*  
General authority and duties of the county excise board.

In its functionings, the county excise board is a declared

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<sup>13</sup> 68 Okl. St. Ann., Sec. 331.

<sup>14</sup> 68 Okl. St. Ann., Sec. 15.38.

<sup>15</sup> Loc. cit.

agency of the state.<sup>16</sup> As such, it is empowered to require adequate and accurate reporting of the finances and expenditures for all budget purposes. It is charged with the duty of requiring adequate provision for performance of mandatory Constitutional and statutory governmental functions, but it has no authority to deny any appropriation for a lawful purpose if within the income and revenue provided.<sup>17</sup> The county excise board was established as a part of the system of checks and balances required by the Constitution. This system of checks and balances is one of the strong points in Oklahoma municipal budget procedure. If any municipality should fail to make and submit a budget, the excise board has the authority to make an appropriation for current expenses and sinking fund purposes and make a levy for these purposes. This action must be advertised in like manner to items that are added to or increased in an estimate.<sup>18</sup>

The general duties of the county excise board are scattered through various sections of the statutes and the Constitution. Most of these duties mentioned here are explained more fully in later chapters. The board must meet on the first Monday of July each year.<sup>19</sup> It must, among other things, make temporary appropriations as provided by law,<sup>20</sup> pass on appro-

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<sup>16</sup> 68 Okl. St. Ann., Sec. 289.

<sup>17</sup> Loc. cit.

<sup>18</sup> 68 Okl. St. Ann., Sec. 291.

<sup>19</sup> 68 Okl. St. Ann., Sec. 289.

<sup>20</sup> 68 Okl. St. Ann., Sec. 303.



priations and make levies for all municipal subdivisions,<sup>21</sup> compute the levy for each fund by the tax formula,<sup>22</sup> apportion the total ad valorem taxes in the manner provided by the Constitution,<sup>23</sup> and certify the levies to the county assessor the same day they are completed.<sup>24</sup> The board must also convene for the purpose of making supplemental and additional appropriations as provided by law.<sup>25</sup> The relationship of these duties should become more apparent in the discussion of proceedings of the excise board with relation to the budget.

## II. PROCEEDINGS OF THE COUNTY EXCISE BOARD

Order of proceedings. The excise board must meet at the county seat on the first Monday of July of each year as provided by the statutes of Oklahoma.<sup>26</sup> It must organize by electing one of its members as chairman, and another as vice-chairman. After this, the board may meet from day to day, or adjourn from day to day and time to time for the purpose of performing the duties required of it by law during the fiscal year.<sup>27</sup> As to each original or supplemental budget, the excise

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<sup>21</sup> 68 Okl. St. Ann., Sec. 331.

<sup>22</sup> 68 Okl. St. Ann., Sec. 297.

<sup>23</sup> Const. Art. X, Sec. 9.

<sup>24</sup> 68 Okl. St. Ann., Sec. 60.

<sup>25</sup> 68 Okl. St. Ann., Sec. 292.

<sup>26</sup> 68 Okl. St. 1941, Sec. 60.

<sup>27</sup> 68 Okl. St. Ann., Sec. 289.

board must proceed in a certain manner.<sup>28</sup>

First, the board must examine the financial statements in the budgets for the purpose of ascertaining the true financial condition of each of the municipalities as of the close of the previous year.

Second, they must examine specifically the several items and amounts stated in the estimate of needs. If these estimates contain items not authorized by law or that may be contrary to law, the board is to order them stricken and disregarded. If any of the amounts of lawful items exceed the amount authorized by law, the excise board must reduce them to the authorized amount. If they do not reduce these items, the excise board joins in the responsibility for this illegal action.<sup>29</sup>

Third, the excise board must examine the content of the estimate of needs to see if the governing board has failed to make provision for any mandatory function provided by the Constitution or the legislature. Within this step, the board also examines the estimates for their adequacy. If the board finds that a governing board has failed to include some provision that is mandatory or if the estimate is inadequate, it must prepare an estimate for these items and attach it to the original estimate. This addition must be published in the same manner as the original budget was published, that is,

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<sup>28</sup>Loc. cit.

<sup>29</sup>Loc. cit.

one time in a weekly newspaper or in two consecutive issues of a daily paper. An affidavit as to this publication must also be attached to the original estimate.

Fourth, the county excise board must compute the total means available to each fund (except the sinking fund) by the converse of the tax formula provided by law.<sup>30</sup> This step represents such an important part of budget procedure that a separate section is devoted to computation of the levy by the tax formula.<sup>31</sup> The sinking fund is excepted here because it receives special attention as explained before.<sup>32</sup>

Fifth and last, if the total of the several items of estimated needs for lawful purposes determined above is within the income and revenue lawfully available, the excise board must approve the estimate by items and compute the levy required.<sup>33</sup>

If the total of the several items of the estimate of needs that are lawful exceed the available income, the excise board must proceed to revise the estimate downward. This revision may be by reducing items, in whole or in part. It should be noted that the governing board concerned may collaborate in the reductions, but the final order must be that of the excise board.<sup>34</sup> This reduction in estimates must be first

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<sup>30</sup> 68 Okl. St. Ann., Sec. 297.

<sup>31</sup> Below, p. 41.

<sup>32</sup> Above, p. 15.

<sup>33</sup> 68 Okl. St. Ann., Sec. 289.

<sup>34</sup> Loc. cit.

applied to the governmental functions merely authorized but not required by law. If a further reduction is necessary, it is to be applied to the items of governmental functions required by the legislature but not within Constitutional requirement. If a situation should exist where this reduction would not bring the total within the revenue provided, the law<sup>35</sup> authorizes a reduction in estimates for Constitutional governmental functions until the total is within the income and revenue provided. This represents the fact that the legislature recognizes that a situation might exist where one part of the Constitution provides for functions while another part provides for the revenue for these functions, and the revenue may be insufficient to perform the functions in whole. Where this does happen, the functions must be reduced to come within the limits of the revenue.

At any time during the meeting to determine the legality of the estimates, the county excise board may require the attendance and the opinion of the county attorney.<sup>36</sup> Usually, the county attorney meets with the excise board throughout their examination to give legal advice on their duties and the functions of the municipal subdivisions.

Building fund appropriations and levies under Section 10, Article 10, Constitution, must be computed by the same formulae and subjected to the same defenses as general funds; however,

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<sup>35</sup> 68 Okl. St. Ann., Sec. 289.

<sup>36</sup> Loc. cit.

the building fund budget need only be itemized as to the amount needed for construction of new buildings, and for a reserve for interest on warrant issues.<sup>37</sup>

Amount of tax and apportionment. The Constitution of Oklahoma<sup>38</sup> provides the limitation to the amount of ad valorem tax. The introduction to this section contains the base limitation and should be quoted here, in part:

Except as herein otherwise provided, the total taxes for all purposes on an ad valorem basis, shall not exceed, in any taxable year, fifteen (15) mills on the dollar, to be apportioned between county, city, town and school district, by the County Excise Board, until such time as the regular apportionment is otherwise provided for by the Legislature.<sup>39</sup>

There are four exceptions to this limitation provided in this section and one provided in a later section.<sup>40</sup> Any county of the state may make an additional ad valorem levy, not exceeding two mills on the dollar valuation, on any property within the county, for separate schools for white and negro children. An additional levy of not to exceed one mill on the dollar valuation on any property within the county must be levied by the excise board to be used exclusively for the acquisition of sites and erection of buildings for separate schools for white and negro children. This is for the separate school

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<sup>37</sup> Loc. cit.

<sup>38</sup> Const. Art. X, Sec. 9.

<sup>39</sup> Const. Art. X, Sec. 9.

<sup>40</sup> Const. Art. X, Sec. 10

building fund.<sup>41</sup> The annual ad valorem tax rate for school purposes may be increased, in any school district, by an amount not to exceed fifteen mills on the dollar valuation, on condition that a majority of the qualified voters of the district, voting at an election held for that purpose, vote for the increase. The manner of this election was explained in an earlier section.<sup>42</sup> The last exception provided in this section is the levy for the sinking fund. It provides, in part, that "an additional levy may be made each year, in the State and in the various subdivisions thereof, on all personal and real property subject to ad valorem taxes, to reasonably take care of bonded and other valid indebtedness . . ."<sup>43</sup> Other sinking fund limitations and provisions have been explained in the section devoted to sinking funds.<sup>44</sup> The last exception to the fifteen mill limitation is found in the next section of the Constitution.<sup>45</sup> This section provides for an additional levy that may be made each year for the purpose of erecting public buildings in counties, cities, or school districts. The limitation of this special increase in rate is five mills on the dollar of the assessed value of the taxable property in the county, city, or school district. This levy is for a

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<sup>41</sup> Const. Art. X, Sec. 9.

<sup>42</sup> Above, p. 10.

<sup>43</sup> Const. Art. X, Sec. 9.

<sup>44</sup> Above, p. 15.

<sup>45</sup> Const. Art. X, Sec. 9

special building fund and requires a special election as already explained.<sup>46</sup>

A summary of the last few paragraphs presented indicates that the maximum millage levy for a municipal subdivision of the State of Oklahoma, except for the sinking fund, is fixed by the Constitution at thirty-eight mills on the dollar valuation of the taxable property in the subdivision. This thirty-eight mill maximum levy is composed of a basic levy of fifteen mills, an additional school district levy of fifteen mills, a separate school general fund levy of two mills, a separate school building fund of one mill, and a building fund levy for counties, cities, towns, and majority school districts of five mills.

The county excise board is responsible for the apportionment of the fifteen mill levy to county, city, town and school districts.<sup>47</sup> It is within the power of the county excise board to apportion all of the basic levy between the county and school districts. The state Supreme Court rendered a decision to this effect on June 29, 1948.<sup>48</sup>

The county excise board must apportion at least five mills out of the fifteen mills total taxes, provided in Section 9, Article 10, of the Constitution, to school districts.<sup>49</sup> This

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<sup>46</sup> Above, p. 8.

<sup>47</sup> Const. Art. X, Sec. 9.

<sup>48</sup> United Press dispatch, The Stillwater (Oklahoma) Daily News-Press, June 29, 1948.

<sup>49</sup> 68 Okl. St. Ann., Sec. 281a.

five mill provision is the minimum provision for every school district, and the excise board has the authority to apportion more than the five mill minimum to the school districts.

Out of the part of the fifteen mill levy apportioned to counties, there is specifically apportioned one-tenth mill to provide aid to crippled children and one-tenth mill to provide for the county audit. The law that makes the above apportionment mandatory also provides the limits for certain optional functions of counties, cities, towns and school districts.<sup>50</sup>

Appropriations and the tax formula. The county excise board must meet and proceed to pass on appropriations for all the municipal subdivisions of the State of Oklahoma.<sup>51</sup> An appropriation is for a specific purpose and when funds have been appropriated for a special purpose, they cannot be used for any other purpose or transferred to another fund except in a certain manner provided by law.<sup>52</sup>

The total of the items of appropriation for a special purpose for which it is not mandatory to make a levy, if a maximum rate is fixed by law, is limited to the equivalent of the net proceeds of the maximum levy, plus ninety per cent of the miscellaneous revenue collected from such source during the preceding fiscal year.<sup>53</sup>

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<sup>50</sup> 62 Okl. St. Ann., Sec. 331.

<sup>51</sup> 68 Okl. St. Ann., Sec. 331.

<sup>52</sup> 62 Okl. St. Ann., Sec. 331.

<sup>53</sup> Loc. cit.



If a levy for a special purpose is mandatory, the total appropriation must be fixed by the county excise board at the equivalent of the net proceeds of the legal levy, plus the amount of any unexpended balance of appropriations for the same purpose of the preceding year. If the governing board of the municipality attaches a certificate that all of the requirements of the legislative mandate involving the special fund have been met, the limit is then the same as for the special purpose which was not mandatory.<sup>54</sup>

The procedure for the computation of the ad valorem tax levy is such an important part of municipal budget procedure that the complete tax formula must be given here.

When the excise board shall have ascertained the total assessed valuation of the property taxed ad valorem in the county and in each municipal subdivision thereof, and shall have computed the total of the several items of appropriation for general fund, sinking fund, and other legal purposes for the county and each municipal subdivision thereof, said board shall then proceed to compute the levy for each fund of each municipality. The procedure for the computation of such levies shall be as follows:

First: Determine the total amount of the several items of appropriation for each fund.

Second: Deduct from such total appropriation the actual cash surplus of the immediately preceding fiscal year.

Third: Deduct from the remainder thus ascertained, the estimated probable income from sources other than ad valorem taxation; however, in no event shall the amount of such estimated income exceed ninety per cent (90%) of the actual collections from such sources for the previous fiscal year; Also, deduct the estimated probable revenue to be derived from surplus collections from taxes in the process of collection of the immediately preceding taxable

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<sup>54</sup> 62 Okl. St. Ann., Sec. 331.

year, provided the surplus so estimated shall be defined as surplus cash is hereinafter defined, and shall include none of that portion of the reserve added at the beginning of such year for delinquent tax, and shall not exceed ninety per cent (90%) of the actual collections of surplus back taxes legally accrued to and credited to the same fund account of the immediately preceding fiscal year.

Fourth: Add to the remainder a reserve for delinquent taxes, the amount of which reserve shall be determined by the excise board, after taking into consideration the amount of uncollected taxes for the previous year or years; provided, that the reserve so added shall not exceed twenty per cent (20%) or be less than ten per cent (10%); and provided further, that the reserve so added shall not be subject to review. Provided, that nothing in this paragraph shall be constructed to repeal House Bill No. 420 of the Sixteenth Legislative Session, the same being Article 7, Chapter 34 of the Session Laws of 1937.

Fifth: Compute the levy necessary to raise an amount of money equal to the remainder thus ascertained, based upon the total assessed valuation of the county or subdivision thereof, after taking into consideration any deduction which must be made because of the exemption of homesteads as required by House Bill No. 3, First Extraordinary Session, Sixteenth Legislature.

Sixth: Compute the reduction in levy necessary to be made because of moneys being required by law to be used for the purpose of reducing ad valorem tax levies.

The rate of levy for general fund, sinking fund, and other purposes authorized by law shall be separately made and stated, and the revenue accruing therefrom respectively, when collected, shall be credited to the proper fund accounts.<sup>55</sup>

A simple illustration of the use of the tax formula for the general fund of a city is shown in Figure 2. The city is the same as the one used in Figure 1.<sup>56</sup> For all practical purposes, the amount to be included as "other income" is ninety per cent of the collections from the same source the

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<sup>55</sup> 68 Okl. St. Ann., Sec. 297.

<sup>56</sup> Above, p. 30.

## Information given:

Total appropriations requested for 1942-43	⌘	134,000
Cash surplus, June 30, 1942		6,000
Tax surplus, June 30, 1942		4,000
Collection of "Revenues from Other Sources" in 1941-42		120,000
Surplus tax collections in 1941-42		7,500
Tax valuations for 1942-43:		
Public service corporations	⌘	2,100,000
Real property (Homesteads ⌘ 1,100,000)		2,900,000
Personal property		500,000
		<u>⌘ 5,500,000</u>

Required: Computation of the tax levy by the tax formula

## Solution:

1. Total appropriations for 1942-43	⌘	134,000
2. Less: cash surplus, June 30, 1942		6,000
	⌘	<u>128,000</u>
3a. Less: estimated other income (Limit is 90% of the 1941-42 other revenues)		108,000
	⌘	<u>20,000</u>
3b. Less: tax surplus, June 30, 1942 (Limit of this item is 90% of 1941-42 surplus collections)		4,000
Net tax	⌘	<u>16,000</u>
4. Add: reserve for delinquent taxes (determined by the excise board between the limits of a minimum of 10% and a maximum of 20%)		1,600
Gross amount of tax to be assessed	⌘	<u><u>17,600</u></u>
5. Total assessed valuation for 1942-43	⌘	5,500,000
Less: homestead exemption		1,100,000
Tax base	⌘	<u>4,400,000</u>

The gross amount of the tax divided by the tax base gives the levy in mills:

$$\text{⌘ } 17,600 \div \text{⌘ } 4,400,000 = 4.0 \text{ mills}$$

FIGURE 2

## USE OF THE TAX FORMULA

\* Oklahoma State Board of Accountancy, "Examination in Governmental Accounting," May 12, 1943.

preceding year. In this illustration, a reserve for delinquent taxes amounting to ten percent of the net tax was added. The illustration shows no computation of reduction in levy as provided in the sixth part of the tax formula. This was omitted because these items occur very infrequently in actual practice and represent only very small amounts.

The term "actual cash surplus" means the excess of cash actually on hand over and above all legal obligations.<sup>57</sup> If there is actual cash surplus in the fund, the tax surplus will be the same as the net taxes in the process of collection; however, if legal obligations of the fund exceed the actual cash, the excess is deducted from net taxes to arrive at the tax surplus.

Temporary, supplemental, and additional appropriations.

No officer of a municipality may legally authorize an expenditure for the municipality until the county excise board has approved an appropriation for that purpose. Since the budgets for a municipality can not be made and approved until some time after the beginning of a fiscal period, a provision has been made for temporary appropriations.<sup>58</sup> The excise board of a county may meet at any time after the beginning of any fiscal year to approve temporary appropriations for the municipal subdivisions in its jurisdiction. The governing boards of the municipality desiring a temporary appropriation for current

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<sup>57</sup> 68 Okl. St. Ann., Sec. 298.

<sup>58</sup> 68 Okl. St. Ann., Sec. 303.

expenses must make a verified application to the excise board. The amount which may be appropriated by a temporary appropriation may not exceed twenty-five per cent of the amount the governing board estimates will be needed for the entire fiscal year for each purpose in the estimate.<sup>59</sup> When the annual budget is finally approved, a temporary appropriation is merged in the annual appropriations and any warrants drawn are charged against the annual appropriations.

If the public welfare or the needs of any county, city, town, or school district require, the excise board may convene at any time and make supplemental or additional appropriations for current expenses.<sup>60</sup> No supplemental or additional appropriation may be made in excess of the income and revenue provided or accumulated for the year. To secure an appropriation of this type, the governing board of a municipality must make a financial statement as of the close of the last month or as of June 20th (the last date such request may be made) and a statement of the amount and purpose of the desired appropriation. These statements are filed with the excise board, and the excise board examines the statements for available surplus. If a surplus in revenue is available for current expenses, the excise board may make the appropriation.<sup>61</sup> The financial statement and estimate must be published one time in a newspaper

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<sup>59</sup> Loc. cit.

<sup>60</sup> 68 Okl. St. Ann., Sec. 292.

<sup>61</sup> 68 Okl. St. Ann., Sec. 292.

at least three days before the excise board may consider the supplemental or additional appropriation.

Summary of the county excise board. Governing boards of the various municipal subdivisions of the State of Oklahoma must make budgets for each fiscal year, publish them in a specific manner, and file them with the county clerk as secretary of the county excise board. The governing boards must file two copies of each budget on or before the following dates: counties, July 10; towns, July 15; cities, July 20; dependent school districts, July 25; and independent school districts, July 30.

The county excise board is composed of three members appointed one each by the Oklahoma tax commission, the district judge, and the board of county commissioners. It has the same members as the county board of equalization.

The excise board must examine the budgets of all the municipal subdivisions and make any changes necessary to bring them within the law. It must apportion the ad valorem levy between the various subdivisions and compute the total means available for each fund by the converse of the tax formula.

The maximum millage levy for a municipal subdivision, except for the sinking fund, is thirty-eight mills. This thirty-eight mills is composed of the basic fifteen mills, fifteen mills for an additional school levy, three mills for separate schools, and five mills for the constitutional building fund. At least five of the basic fifteen mills must be apportioned to school districts.

The excise board may make temporary appropriations before the annual budget is finally approved. These temporary appropriations are limited to twenty-five per cent of the estimate for the year. The excise board may also make supplemental and additional appropriations within the limit of the funds available. The last date for a temporary or supplemental appropriation is as of June 20, of the fiscal period in which it is requested.

In explaining the process of determining the levy, no mention was made of how the excise board knows the assessed valuation of public service, real, and personal property. A discussion of this necessary material, along with the final disposition of the budget, was deferred until a later chapter.

## CHAPTER V

### DETERMINATION OF THE TAX BASE, THE TAX ROLLS, AND FINAL DISPOSITION OF THE BUDGET

The main point of contact a taxpayer has with the budget for a municipality is when he pays his ad valorem taxes at the office of the county treasurer. The preceding chapters have shown how the budget is made and how the millage levy is determined; this chapter explains how the county treasurer knows exactly how much each taxpayer should pay. This chapter also explains where municipal budgets go from the county excise boards, the effect of a protest by a taxpayer, and how the municipal budgets become final.

#### I. DETERMINATION OF THE TAX BASE

The manner of determining the assessed valuation to be used by the excise board in the tax formula is well established by law and practice. The county assessor, the county and state boards of equalization, and the Oklahoma tax commission all perform definite functions within this process.

Preparation and content of the assessment rolls. The county assessor of each county must prepare an assessment roll each year.<sup>1</sup> This assessment roll must contain a list of all the lands and town lots in the county in numerical order. It must show the name and address of the owner in each case and

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<sup>1</sup> 68 Okl. St. Ann., Sec. 15.52.



the school district in which the lands or town lots are located. The roll also must contain a list in alphabetical order of persons or corporate bodies in whose names personal property has been assessed.

If there is a homestead interest in any property, it must be shown on a separate line showing the assessed valuation of the property, the amount of exemption allowed, and the assessed valuation less the exemption.<sup>2</sup> This information is necessary to make the special computation for the old and new sinking fund explained earlier.<sup>3</sup> The county assessor must enter assessed valuations in the column provided. Columns are also provided to show the equalized values as fixed by the county and state boards of equalization. The form for the assessment roll is prescribed by the Oklahoma tax commission.<sup>4</sup>

The assessment roll must be correctly footed and balanced and delivered to the county board of equalization on or before the fourth Monday in April of each year.<sup>5</sup>

The county board of equalization. The members of the county excise board<sup>6</sup> are also the members of the county board of equalization. The county clerk is the secretary and clerk

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<sup>2</sup> Loc. cit.

<sup>3</sup> Above, p. 16.

<sup>4</sup> 68 Okl. St. Ann., Sec. 15.52.

<sup>5</sup> Loc. cit.

<sup>6</sup> Above, p. 32.

of both boards.<sup>7</sup> This board holds sessions, commencing on the fourth Monday in April and ending not later than the first Monday in June. Their sessions start on the last day the county assessor may deliver the assessment roll to them.

With respect to the equalization of valuations, the county board of equalization has three functions. First, it must equalize, correct and adjust the assessed valuation of real and personal property to conform to the fair cash value as defined by law. Second, it must add any omitted property. Third and last, it must cancel assessments of property not taxable by law.<sup>8</sup>

After the county board of equalization has adjusted the valuations in the above manner, it may not raise or lower any assessed valuation without hearing competent evidence justifying the change, or until a member or agent of the board makes a personal inspection of the property and makes a written report to the board.<sup>9</sup>

If a taxpayer is not satisfied with the equalized valuation made by the board, he may appeal the decision. This appeal must be made to the district court of that area within ten days after the final adjournment of county board of equalization. Any further appeal must be made to the state supreme court.<sup>10</sup>

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<sup>7</sup> 68 Okl. St. Ann., Sec. 15.38.

<sup>8</sup> 68 Okl. St. Ann., Sec. 15.40.

<sup>9</sup> 68 Okl. St. Ann., Sec. 15.40.

<sup>10</sup> 68 Okl. St. Ann., Sec. 15.42.

The Oklahoma tax commission and the state board of equalization. As soon as practicable after the assessment rolls are equalized by the county board of equalization, the county assessor must make out an abstract of the equalized assessments.<sup>11</sup> The form for this abstract is prescribed by the Oklahoma tax commission and is subject to review by the state examiner and inspector. This abstract must be transmitted to the Oklahoma tax commission not later than the third Monday in June of each year.<sup>12</sup>

The Oklahoma tax commission is composed of three persons appointed by the Governor.<sup>13</sup> This commission must review and suggest changes in the assessed valuation of real and personal property for the whole state. Within five days after all the abstracts of the county assessments are filed with the tax commission, the commission must render its findings to the state board of equalization for final action.

The state board of equalization consists of the Governor, the state auditor, the state treasurer, the secretary of state, the attorney general, the state examiner and inspector, and the president of the board of agriculture.<sup>14</sup> This board must take final action on the findings of the tax commission and assess all property of railroad and public service corporations in

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<sup>11</sup> 68 Okl. St. Ann., Sec. 15.54.

<sup>12</sup> Loc. cit.

<sup>13</sup> 68 Okl. St., Ann., Sec. 2.

<sup>14</sup> 68 Okl. St. Ann., Sec. 15.44.

Oklahoma. After this assessment is made, the board has the state auditor to certify the assessed valuations to the county assessors of the various counties. These valuations must be certified on or before the third Monday of June of each year.<sup>15</sup>

Final certification of the tax base. Within ten days after the county assessor of each county receives the certificates of assessment of all railroad and public service corporations and the equalized value of real and personal property in the county, he must prepare an abstract of these valuations and file it with the county excise board. This abstract must show separately the valuations of all personal property, real property, and public service property in each municipality.<sup>16</sup> The valuations in this abstract form the tax base which the county excise board uses in computing the levies by the tax formula.

## II. THE TAX ROLLS

The manner in which the tax levies are made by the county excise board has already been explained.<sup>17</sup> It is the duty of the county excise board to certify the levies of each municipality to the county assessor on the same day that the levies are fixed. The time limitation on fixing the levies is fifteen days after the budgets are filed with the excise board; however, if the

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<sup>15</sup> 68 Okl. St. Ann., Sec. 15.37.

<sup>16</sup> 68 Okl. St. Ann., Sec. 15.54.

<sup>17</sup> Above, pp. 26-47.

valuations have not been certified to the county excise board by that time, the excise board has thirty days from the date of receipt of these valuations.<sup>18</sup> The way these levies become taxes due from the taxpayers is explained here.

Preparation of the tax rolls. It is the duty of the county assessor to prepare the tax rolls. These rolls are similar to the assessment rolls; however, the tax rolls show the amount of liability of the taxpayer. All real property is shown by lands and lots, and the values of all buildings and improvements are shown with the related property.<sup>19</sup>

The law<sup>20</sup> requires the county assessor to extend the levies on his tax rolls immediately upon certification of these levies. This computation of the tax liability of each taxpayer is to be made without regard to any protest that may have been filed with regard to the levies, the budgets, or the assessed valuations.<sup>21</sup>

Delivery to the county treasurer for collection. After the county assessor prepares the tax rolls and an abstract, he delivers the tax rolls to the county treasurer and the abstract to the county clerk. This delivery must be made on or before

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<sup>18</sup> 68 Okl. St. Ann., Sec. 15.55.

<sup>19</sup> Loc. cit.

<sup>20</sup> 68 Okl. St. Ann., Sec. 60.

<sup>21</sup> 68 Okl. St. Ann., Sec. 15.55.

the first day of October of each year.<sup>22</sup> The county assessor must attach his warrant to the tax rolls requiring the county treasurer to collect the taxes in accordance with the tax rolls. This warrant and the tax rolls are made full and sufficient authority for the collection by the treasurer of all the taxes contained in the rolls.<sup>23</sup> The exact manner in which the warrant is to be made is not specified; however, a statement is made in the law<sup>24</sup> to the effect that no informality in the manner in which the warrant is made will render the collection of the taxes illegal.

If there should be any correction or change in the levy of a municipality, after the levy has been certified by the county excise board, the county assessor must deliver the tax rolls to the county treasurer without making the correction. It is then the duty of the county treasurer, with the help of the county assessor, to make the correction. This procedure must be followed regardless of whether the change is made by the order of the county excise board or any court of competent jurisdiction.<sup>25</sup>

When the county assessor delivers the tax rolls to the county treasurer, the county treasurer accepts the rolls and gives his receipt for them. When the taxes become due and

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<sup>22</sup> 68 Okl. St. Ann., Sec. 60.

<sup>23</sup> 68 Okl. St. Ann., Sec. 15.55.

<sup>24</sup> Loc. cit.

<sup>25</sup> 68 Okl. St. Ann., Sec. 60.

payable, the treasurer collects them in the manner familiar to all.

### III. FINAL DISPOSITION OF THE BUDGETS AND PROTEST

The various budgets have been traced, in preceding chapters, from their preliminary stages to the county excise board. Then, this board's action with respect to the budgets was explained. Next, the discussion turned to the determination of the tax base, the preparation of the tax rolls, and the collection of the taxes.

Now the discussion returns again to the county excise board to explain the final phase in the preparation of the municipal budgets. At the completion of this phase, the budgets become final and are put into operation by the governing boards of the various municipal subdivisions.

Final disposition of the budgets. After the county excise board meets and passes on appropriations and levies for all the municipal subdivisions, the law<sup>26</sup> required this board to file one copy of all budgets with the state auditor and one copy of all budgets with the county clerk. A space is provided on the budget forms for certification of the levies made; therefore, this certification of the levies made for each municipality will be on file with the county clerk and the state auditor.

As soon as the budgets are filed with the county clerk,

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<sup>26</sup> 68 Okl. St. Ann., Sec. 331.

it is his duty to publish this fact. Publication must take place for one time in some newspaper of general circulation in the county.<sup>27</sup> Within three days after the budgets are filed with the state auditor, he must give notice of this fact by mail to any taxpayer who has filed a written request for this information.<sup>28</sup>

Protest. Taxpayers of the state have the right, at all times, to examine the budgets on file with the county clerks and the state auditor. There is a time limit of forty days within which any taxpayer may protest against any budget or the levies in the budgets. A protest must be filed with the state auditor within the forty day period or all the appropriations and levies will be deemed legal, and all proceedings to contest the validity of these budgets will be barred.<sup>29</sup> Thus, the budget for one municipality may become final by the expiration of the protest period while the budget for another municipality may have to be finally approved by the courts as explained in the next few paragraphs. The excise board may reconvene at any time within sixty days after the filing with the state auditor and reduce any protested budgets and levies.<sup>30</sup> The effect of this action is to start the forty day protest period for these changed budgets over again.

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<sup>27</sup> Loc. cit.

<sup>28</sup> Loc. cit.

<sup>29</sup> 68 Okl. St. Ann., Sec. 332.

<sup>30</sup> 68 Okl. St. Ann., Sec. 332.





The court of tax review is the court that makes the decision on a protested budget. When a protest is filed with the state auditor, it is being filed with the court of tax review, because the state auditor is the clerk of that court. The court of tax review consists of three district judges who are designated by the Governor. It meets at the state capitol on the first Monday in October to hear all protests which have been filed for five days.<sup>31</sup>

This court has the power to administer oaths and compel the attendance of witnesses. The law<sup>32</sup> suggests that the court hear and determine all protests in the same day; however, it does not make this mandatory. Decisions are rendered by a majority of the three judges<sup>33</sup> and become final unless appealed to the state supreme court within ten days.<sup>34</sup> Thus, a budget may become official by a favorable court decision and expiration of the ten day period in which no appeal is filed, or by a state supreme court decision.

A protest does not prevent the spreading of record and the collection of any levy;<sup>35</sup> however, it does affect the use of the proceeds of the levy. Pending the expiration of the protest period or final determination of a protested budget, the budget cannot be put into operation. No warrant may be

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<sup>31</sup> 68 Okl. St. Ann., Sec. 333.

<sup>32</sup> 68 Okl. St. Ann., Sec. 334.

<sup>33</sup> 68 Okl. St. Ann., Sec. 335.

<sup>34</sup> 68 Okl. St. Ann., Sec. 336.

<sup>35</sup> 68 Okl. St. Ann., Sec. 339.

issued or debt contracted by any municipal subdivision except for certain enumerated current expenses of operation.<sup>36</sup>

A brief summary shows that in the final stage of budget preparation, budgets are filed with the state auditor as clerk of the court of tax review. If a budget is not protested within forty days after this filing, it becomes final and is put into operation by the governing boards of the municipalities concerned. If it is protested, the court of tax review, or the supreme court, makes the final decision. When this decision is rendered, a protested budget, as finally decided by the courts, becomes final and is put into operation.

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<sup>36</sup> 68 Okl. St. Ann., Sec. 341.

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CHAPTER VI  
STRONG AND WEAK POINTS OF MUNICIPAL  
BUDGET PREPARATION IN OKLAHOMA

The budgetary laws of Oklahoma have been developed over a long period of time by a process of eliminating the weak points and leaving the strong points. The court cases involving these laws have helped in this process, and general practice has continued to conform, as nearly as possible, to the laws, rules, and regulations involved in municipal budget preparation.

The above process has resulted in a system of budget preparation for Oklahoma which, as a general conclusion of this study, is highly satisfactory. The budgets prepared allow the governing boards involved adequate power to perform the necessary and desired functions of government; however, final control is left in the hands of the people. These budgets serve as adequate checks on the power of the governing boards to collect revenues and make expenditures; yet, the budgets are versatile enough to allow the smooth operation of the governmental units.

A minor weak point of this process of development and the present laws and practices is that the continual change has resulted in the elements of legal budget preparation being widely scattered through the statutes and the case records. This makes it difficult for the accountant, the governing boards, and the people to understand the proper procedure of budget preparation. It has also resulted in many court cases

arising out of conflicting sections and interpretations.

With the general conclusion that the present system of budget preparation for municipalities is highly satisfactory, it is unnecessary to attempt to enumerate all the strong points in the present system. Such a conclusion must rest on the material already presented. There are, however, a few main points that might be stressed as being especially important to the successful operation of the system, and a few points that seem to indicate that the system has not been completely perfected.

The Constitution of Oklahoma, enacted by popular vote, places restrictions on the authority of the governing boards. Certain revenues may be collected without the people giving direct authorization; however, if a municipal subdivision of the state wishes to create a building fund or contract long-term debt, such a question must be submitted to the voters of the subdivision for their approval. These limitations, along with the fact that the governing boards are elected by popular vote, help to insure that the municipalities will serve the functions desired by the people.

The county excise board of a particular county serves as an excellent check on the activities of the officials of the various municipal subdivisions involved. This board reviews the financial statements and estimates of needs, and requires corrections necessary to make these budgets come within the legal limitations.

The county excise board has almost unlimited authority

in the allocation of the basic fifteen mill levy to the county, cities and towns, and the school districts. It must allocate five of the basic fifteen mills to the school districts, but may allocate the remaining ten mills in any way it desires. This ability might indicate a weakness in the law and practice because the municipal subdivisions may not be equally represented on the county excise board. The governing board of the county (board of county commissioners) appoints one member to the county excise board while the governing boards of cities and towns and school districts have no voice in such an appointment. This might produce a tendency toward allocation of more than its proportionate share of the fifteen mills to the county.

Along this same line of representation, there is a possibility, in counties containing large cities, that the people living in the country may not be adequately represented by the budget making bodies of the county and the dependent schools. The qualified voters living within a city may vote for the county superintendent and the county commissioners, although the major functions of these officers, with respect to budget procedure, are outside the city. If the city is large enough, the representatives for the country may be elected by the voters of the city.

All budgets are supposed to be within the legal limits when approved by the county excise board; however, a check is placed on the excise board by allowing a protest period before a budget may become official. Any taxpayer may examine a budget for its legality, and if he believes it is not within

the limits provided by law, he may protest that budget. The courts will require any necessary changes before the budget can be put into operation by the governing board concerned. This right of protest by any taxpayer is one of the strongest points in Oklahoma budget procedure. There are certain vested interests in each municipality which are large enough to examine each budget closely, and quickly protest any item of the budget that is questionable.

The date limitations involved in the preparation phase of budget procedure in Oklahoma are arranged in such a manner as to make it possible for the many bodies involved to discharge their duties with respect to the budgets without disrupting the remainder of their functions. In actual practice, every effort is made to comply with these date limitations; however infrequent minor failures to do so have not resulted in a vast amount of litigation.

In summary, the procedure of budget preparation in Oklahoma represents a well developed practice. Ultimate control of the functions of the various municipal subdivisions of Oklahoma has been carefully left in the hands of the people. Certain powers have been delegated to the governing boards of the municipalities in order to secure smooth operation in performing the functions authorized and required by law; however, a system of checks and balances has been developed to insure the proper use of these powers.

This system of checks and balances is reflected in legal budget preparation and results in a procedure which, though

not completely free of weak points, is well organized and performs its function adequately.

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