

COUNTIES:-County Court must transfer unexpended balance in road fund to the general revenue fund to be expended under the provisions of the County Budget Act in the purchasing of right-of-ways.

June 13, 1934.

6/15



Mr. Ted Frossard,  
Prosecuting Attorney,  
Cassville, Missouri.

Dear Sir:

We are acknowledging receipt of your letter in which you inquire as follows:

"The county court of this county has requested me to obtain your opinion on the following matter.

"A farm to market highway is going to be built in this county extending from the Roaring River State Park to Seligman. It has been the custom for the county court to assist the road districts in obtaining the right of way for these roads. Last year the county court recognized that this obligation would occur and at the end of the year arranged to leave in the 1933 road fund a sum sufficient to pay for the necessary right of way outside of the Seligman Road District.

"This road is now ready to be built and the court wants to know whether they can use this money still remaining in the 1933 road fund to pay these claims, or whether, under the new budget law, they must advance into the 1934 general revenue fund all the surplus remaining in this 1933 road fund, and then apportion it out according to the priority of payments called for by the budget law."

You inquire whether the balance left from the road fund can be used by the county court for the purpose of purchasing right-of-ways in road districts, or whether the funds shall be transferred to the general revenue fund and then apportioned out according to the priority payments as provided for in the budget act. The budget act is found in Laws of Missouri 1933, pages 340 to 351, inclusive, and became effective July 24, 1933. We shall not attempt to quote this act to you but shall call your attention to the various provisions

which we think apply. We do not find that our courts have as yet passed upon the question about which you inquire. The general purpose, as evidenced by the budget act, is to require a business-like administration of the affairs of the county, based upon an estimate of probable expenditures and an estimate of probable receipts from the revenue. We do not believe that the budget act does or was intended to specify the purposes for which the county may expend its money so long as the purpose is a lawful one, but it does specify the priority which shall exist among the payments to be made by the county court.

We believe it was the intention of the budget act that all funds belonging to the county at the time that this act goes into operation shall be transferred into the general revenue fund, there to be paid out according to the priority expressed in the law. If moneys remaining in the various funds should be kept segregated in those particular funds to be expended for the purposes for which the various funds were created, then the effect would be to destroy the purpose and effectiveness of the budget act. If such funds could be held intact and the moneys used not under the terms of the budget act, then the priority of payments required by the budget act would be a nullity. If money remaining in the road fund at the present time could be used for the purchase of right-of-ways without considering the requirements of the budget act, then money in all other funds set up by the county court could be used in the same way. The result would be that the budget act would not become effective as to the county moneys contained in those funds until such time as those funds were exhausted. As we construe the intention and requirements of the act all funds of the county, when the budget scheme is put into effect, must go into the general revenue fund, to be administered under the priorities and requirements as set forth in the act.

Class 3 of Section 2 of the act provides as follows:

"The county court shall next set aside and apportion the amount required, if any, for the upkeep, repair or replacement of bridges on other than state highways (and not in any special road district) which shall constitute the third obligation of the county."

Section 5 deals with the classification of estimated expenditures and Class 2 of the Section provides as follows:

"Repair and upkeep or replacement of bridges on other than state highways and not in any special road district. List bridges."

It appears under Section 2, Class 3, that the county court shall apportion money for the upkeep, repair and replacement of bridges on other than state highways which are not

in any special road district. This is made an obligation of the third class. It is apparent that the purchasing of right-of-ways in road districts would not come under Class 3 above. Neither would it come under Class 2 of Section 5, as set out above. Class 6 of Section 2 provides as follows:

"After having provided for the five classes of expenses heretofore specified, the county court may expend any balance for any lawful purpose. Provided, however, that the county court shall not incur any expense under class six unless there is actually on hand in cash funds sufficient to pay all claims provided for in preceding classes together with any expense incurred under class six. Provided, that if there be outstanding warrants constituting legal obligations such warrants shall first be paid before any expenditure is authorized under class 6."

That the county court may lawfully expend the county funds for the purpose of obtaining right-of-ways in the building of the state highway system has not, to our information, ever been questioned. As a matter of fact, such practice has obtained in this State practically since the beginning of the present road law. We do not understand the budget law to define what are lawful expenditures by the county courts. The budget act simply declares the priority which certain claims based upon lawful obligations shall be paid. Under Class 6 of Section 2, which is the last class, the county court may expend its unexpended funds for any lawful purpose. We believe that an expenditure for right-of-ways, as suggested in your inquiry, may properly be made under Class 6, but, of course, the requirements and conditions of Class 6 must first be met. In other words, we believe that the act does not provide for the expenditure of funds for right-of-ways in any of the five prior classes. We further believe that the act itself does not prohibit the expenditure of money for purchasing right-of-ways, providing such right-of-ways are purchased under the proper classification and the requirements of the budget law are complied with.

We are therefore of the opinion that any funds remaining in the road fund shall be transferred to the general revenue fund of the county, and that the expenditure of those funds for the purpose of purchasing right-of-ways must be done under the priorities and classifications as set out in the act and above discussed.

Very truly yours,

APPROVED:

FRANK W. HAYES,  
Assistant Attorney General.

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Attorney General.