

ROADS AND BRIDGES: Surplus in general county road fund can be transferred to a special road district.
COUNTY COURT: County court has no authority to rent road machinery to another county, but if they do, rental must be paid into the county treasury.

June 3, 1941

*But see
W/D of 73-1943
& note.
6-11
See Op 4-1944*



Honorable John H. Keith
Prosecuting Attorney
Iron County
Ironton, Missouri

Dear Sir:

We are in receipt of your request for an opinion under date of May 28, 1941, which reads as follows:

"The county court of this, Iron County, leased certain road machinery owned by Iron County to Washington County and has now collected the money due for the use of the machinery, and inquire of me if this money could be turned over to the county treasurer and placed to the credit of the general revenue fund. I find no statute giving the county court any legal right to lease or rent road machinery to another county, but in as much as this has been done, I have advised the court that in my judgment this money should go to the road fund and not the revenue fund.

"Second, the court inquired of me if it could transfer funds from the county road fund to a special road district to be used for road purposes in the special road district. I gave the court my opinion it could not do so.

"Please advise me on each of the above matters."

In answer to the first paragraph of your letter we find no statute giving the county court any authority to lease road machinery to another county. We also do not find any section of the statute which gives any implied authority to lease road machinery to another county.

According to 15 Corpus Juris, page 536, par. 220, the rule of law is set out as follows:

"The control and management of all property, real and personal, for the use of a county, is usually expressly vested by statute in the county board or county court of each county, and in such control and management the board occupies a position of trust, and is bound by the same rules of fidelity as a trustee of an express trust. Such board cannot, however, authorize the use of county property for purposes other than those provided by law, as declared by statutes in effect at the time, the legislature having power, on account of a county being but a mere agency of the state, to control the use, management, and disposition of county property, except where the property has been acquired by a grant limiting its use to certain specified purposes. * * * * *"

Also, in 15 Corpus Juris, page 537, par. 221, it sets out the rule as to the authority of renting or leasing county property as follows:

"In accordance with the general rule heretofore stated, that county boards or county courts have no powers other than those conferred expressly or by necessary implication, such courts or boards have no power to rent or to lease property or franchises owned by the county, in the absence of statutory authority so to do; and where they do possess statutory authority, it must be strictly pursued, or the lease will not be binding. * * * * *"

Since the machinery has been leased and the money paid by Washington County to Iron County, the question is

into what fund the money must be placed.

In the case of Johnson v. Deuser, 56 S. W. (2d) 803, the court, in determining as to the receipt of surplus fees concerning which there was no express legislation on the subject, in paragraph 4 said:

"Concededly, there has been no express legislation upon the subject. However, if such surplus fees do not belong to the members of the board itself, then they belong to the county, and therefore would be payable into the county treasury by those in whose hands they are, as in the case of other persons chargeable with county funds. The general statutes are broad enough to cover that contingency, and appellants do not contest the point if we are correct in holding that they themselves are not entitled to retain the surplus funds remaining."

In the above case the court merely held that the excess fees should be paid into the county treasury.

In your request you state "I have advised the court that in my judgment this money should go to the road fund and not the revenue fund." Since there is no statutory legislation as to the receipt of this money or as to which fund it should be paid into, we are compelled to base our opinion on the case of Johnson v. Deuser, 56 S. W. (2d) 803, supra, which holds that the money should be paid into the county treasury and does not designate any particular fund. We will say that this money can be transferred from the county treasury to the road fund if the transfer is made in accordance with our opinion answering your second paragraph.

In reference to your request in your second paragraph, we are submitting the following authorities for our opinion in that matter:

Section 8526, R. S. Missouri 1939, reads as follows:

"The county courts in the several

counties of this state, having a population of less than two hundred and fifty thousand inhabitants, at the May term thereof in each year, shall levy upon all real and personal property made taxable by law a tax of not more than twenty cents on the one hundred dollars valuation as a road tax, which levy shall be collected and paid into the county treasury as other revenue, and shall be placed to the credit of the 'county road and bridge fund.'"

This section is based upon Article X, Section 11 of the Constitution of Missouri

Section 8527, R. S. Missouri 1939, reads as follows:

"In addition to the levy authorized by the preceding section, the county courts of the counties of this state, other than those under township organization, in their discretion may levy and collect a special tax not exceeding twenty-five cents on each one hundred dollars valuation, to be used for road and bridge purposes, but for no other purposes whatever, and the same shall be known and designated as 'the special road and bridge fund' of the county: Provided, however, that all that part or portion of said tax which shall arise from and be collected and paid upon any property laying and being within any road district shall be paid into the county treasury and placed to the credit of the special road district, or other road district, from which it arose, and shall be paid out to the respective road districts upon warrants of the county court, in favor of the commissioners, treasurer or overseer of the district, as the case

may be: Provided further, that the part of said special road and bridge tax arising from and paid upon property not situated in any road district, special or otherwise, shall be placed to the credit of the 'county road and bridge fund' and be used in the construction and maintenance of roads, and may, in the discretion of the county court, be used in improving or repairing any street in any incorporated city or village in the county, if said street shall form a part of a continuous highway of said county leading through such city or village; but no part of said fund shall be used to pay the damages incident to, or costs of, establishing any road: Provided further, that no warrant shall be drawn in favor of any road overseer until an account for work done or materials furnished shall have been presented and audited by the county court."

This section is based upon Article X, Section 22 of the Constitution of Missouri.

In reading the two sections together, it shows that it was the intention of the legislature that the taxes levied, collected and disbursed under Section 8527, supra, which are designated as special taxes, should not be transferred in any manner and should remain in the general road fund of the special road district or districts. This intention is construed by reason of the following: "to be used for road and bridge purposes, but for no other purposes whatever, and the same shall be known and designated as 'the special road and bridge fund' of the county: * * " No such provision appears in Section 8526, supra, which is a mandatory law requiring the county court to levy a tax of not more than twenty cents on the one hundred dollars valuation as a road tax and placed to the credit of the "county road and bridge fund."

Section 8527, supra, is not mandatory but is discretionary with the county court as to whether or not

they should make this additional levy in addition to the levy set out under Section 8526, supra. It will also be noticed under Section 8527, supra, the following appears:

"* * * * Provided further, that no warrant shall be drawn in favor of any road overseer until an account for work done or materials furnished shall have been presented and audited by the county court."

Under the above provision the county court oversees the work done or materials furnished under the special tax as set out in Section 8527, supra.

Section 8527, supra, is earmarked to the effect that the tax levied under that section can only be used for road and bridge purposes and for no other purposes whatsoever. This provision prevents the county court from transferring any of said funds to any other fund but under Section 8526, supra, no such earmarks appearing in that section under certain conditions, the county court may transfer certain moneys from one fund to another which money must be a surplus.

In the case of Decker v. Diemer, 229 Mo. 296, 1. c. 336, the court, in holding that a surplus could be diverted from a fund having a given and designated purpose to another legitimate county purpose, said:

"The bald question then is: May a county court transfer a surplus and divert it from a fund, having a designated and given purpose, to another legitimate county purpose, by force and reason of the satisfaction of the original use or purpose? We answer that question in the affirmative. We are of the opinion that the force of the Cottey Act is spent in another direction, as the history of the times of its enactment well shows, and that it ought not to be construed as prohibiting such transfer of funds. We are further of the opinion that

the various statutes providing for the transfer of funds, when practically construed, lend substance and countenance to the view we have expressed. We are further of the opinion that sections 6723 to 6729 inclusive, supra, now a part of article 2 of chapter 97, entitled 'Counties', is a live law though old. The chapter and article have been revised and amended from time to time and brought down for every day use. The Cottey Act was not intended to repeal it and the provisions of the two are not antagonistic or inconsistent. Repeals by implication are not favored. It is our duty to harmonize and preserve the whole body of the law, when we can. We are further of the opinion that when all warrants and debts properly chargeable to a fund in any one year are paid and provided for, the residue of such fund is a 'surplus' within the purview of the transfer sections. Is not the building of a courthouse as legitimate as any other county purpose? Are bonds so desirable that the people of a Missouri county must bond themselves when bonds are not necessary, or go without a courthouse? Must they levy special taxes when they have the means in the treasury to avoid such special levy? Running like a thread through the statutes is the idea of as low a rate of taxation as is compatible with the welfare of the people, and the other idea that the county's business must be done for cash. All these ideas are conserved by the holding made."

Also, in the case of State ex rel. v. Railroad, 270 Mo. 251, l. c. 268, the court said:

"Section 22 of Article 10 of the Consti-

tution, which we have already quoted, provides that in addition to taxes authorized to be levied for county purposes under and by virtue of section 11, article 10, the county court may in its discretion levy and collect a special tax not to exceed twenty-five cents on the one hundred dollars of valuation, to be used for road and bridge purposes, but for no other purpose whatever. This provision uses no other term of description than 'special tax.' The word special only means relating to a particular thing or class of things, and is explained fully by the clause requiring it to be used for road and bridge purposes, but for no other purpose whatever. The necessity for its use in this connection is made plain in *Decker v. Diemer*, supra. This court In Banc said (p. 336): 'The bald question then is: May a county court transfer a surplus and divert it from a fund having a designated and given purpose, to another legitimate county purpose, by force and reason of the satisfaction of the original use or purpose? We answer that question in the affirmative.' That portion of the levy authorized by the Constitution for county purposes which had been set apart for roads and bridges might be diverted from such purpose, and the people thought best to and did confine the additional levy to use for the special purpose for which they authorized it and no other. Thus any road-and-bridge tax in excess of the amount allowed by the Constitution for county purposes must be held sacred to the use for which it was authorized. The fact that it is levied nominally 'for road-and-bridge purposes' and that it is in excess of the tax authorized by section 11, article 10, of the Constitution, fixes its special

status and limits its use. The amendment does not purport to prescribe a name by which it must be called upon the record, but only to designate the use to which it shall be limited when collected. It is only necessary that it should be made separately from and in addition to the levy 'authorized for county purposes,' and that it should appear to be 'for road-and-bridge purposes.' All else is taken care of by the law which guards the legislative intent when once expressed. The same words are transferred from the Constitution to section 10482 of the present Revised Statutes, and there is nothing in the act in which they occur that suggests a different interpretation.
 * * * * *

In both of the above cases in order that taxes could be diverted by the county court from one fund to another all warrants and debts properly chargeable to a fund in any one year must be paid and provided for before the balance of such fund is a "surplus." Of course, the transfer of funds from one fund to another is governed by the County Budget Act and especially so by Class 6 of Section 10911, R. S. Missouri 1939, which reads 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."

CONCLUSION

In view of the above authorities it is the opinion of this department that the County Court of Iron County had no authority, either expressly or impliedly, to rent road machinery to the County of Washington. Since the road machinery has been leased and the money paid for the rental thereof by Washington County to Iron County, it is our opinion that the money should be paid into the general fund of the county treasury, but in accordance with the above opinion concerning the transfer of funds, the fund can be transferred from the general revenue fund to the special road district in compliance with Class 6, Section 10911, R. S. Missouri 1939, known as the County Budget Act.

In answer to your second question, it is the opinion of this department that the County Court of Iron County can transfer funds from the county road fund to a special road district to be used for road purposes in the special road district providing that the funds so transferred are a surplus and the transfer is made in compliance with Class 6 of Section 10911, R. S. Missouri 1939, known as part of the County Budget Act, but if there is no surplus the funds cannot be transferred from the county road fund to a special road district. If there is a surplus which is transferable from one fund to another, the county court still has supervision of the payment for the work done or materials furnished as set out in the last provision of Section 8527, R. S. Missouri 1939.

Respectfully submitted

APPROVED:

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WJB:DA