

COUNTY REVENUE--County courts may issue warrants WHEN, and may transfer unused or surplus funds from one department to another WHEN. (5% "moratorium" bank depository)

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March 23, 1933.



Hon. Homer G. Chaffin  
Prosecuting Attorney  
Webster County  
Marshfield, Missouri

Dear Mr. Chaffin:

In answer to your letter of March 1th, 1933, wherein you state that your "County Depository is a bank that is open under restrictions, that is, 5% withdrawals", and that you have on deposit \$70,000.00, which "on the Treasurer's Books is divided up into particular funds, three of which are subject to withdrawal by Warrant, and the other two--Permanent School Fund and All Road Fund subject to transfer by Order of the Court."

Our opinion is that you have a right to draw on the three funds, warrants which will be paid in proper order up to the 5% of these funds. Now in regard to the other, I will quote part of a section or two in regard to same.

Under Section 12162, R. S. Mo. 1929, the county court has the right "to audit, adjust and settle" accounts, etc.

Section 12167, R. S. Mo. 1929, provides,

"Whenever there is a balance in any county treasury in this state to the credit of any special fund, which is no longer needed for the purpose for which it was raised, the county court may, by order of record, direct that said balance be transferred to the credit of the general revenue fund of the county, or to such other fund as may, in their judgment, be in need of such balance."

Under Sections 12167 and 12168, R. S. No. 1929, if the county court decides that under these two sections this \$5 on the other two funds can be transferred, it might be well to do so in order that they might be checked out of the bank to the fund where, or to whom they are badly needed. In other words, the discretion given in these sections (12167 and 12168), if the facts warranted, would permit them to transfer them to the other three funds, and issue warrants against them.

"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 (or) provided for, the residue of such fund is a "surplus" within the purview of the transfer sections."

Becker v. Diemer, 229 No. 296 l. c. 336, 337.

If the facts would not permit them to do so, they could check them out into some other depository, if they thought advisable, and wait until they are needed.

Yours very truly,



Geo. B. STROTHER  
Assistant Attorney-General.

APPROVED: \_\_\_\_\_

ROY McKITTRICK  
Attorney-General.

CB:RG