

COUNTY COURTS:

Effect of closed banking institutions  
on payment of funds appropriated  
by County Court.

*Dec 9874 - 7585 R.S. Mar 1929 ✓*

April 5, 1933

FILED  
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Honorable Robert C. Fields  
Prosecuting Attorney  
Lebanon, Missouri

Dear Mr. Fields:

We acknowledge receipt of your letter dated March 25, 1933, as follows:

"I have been asked by the County Court of this county to obtain an opinion from your office relative to the following statement of facts:

In January of 1930, the Bank of Conway failed. In this bank the county had approximately \$35,000.00, this bank having been a county depository for some time. The current fund, the court house bond fund, the numerous school funds, etc. had balances on the Treasurer's books at this time and while it was all carried in the one account it belonged to the various funds. The Treasurer at that time did not charge up as a loss any part of the amounts that the Treasurer's books showed that each fund had therein. Another depository had been opened about two years prior to the failure of the bank as this bank at Conway did not receive a contract as a depository for all the county's money during the period of two years before the crash. The books of the Treasurer's office were left as they were before the bank failed and this practice was followed. If a school district had \$200.00 on the Treasurer's books when the bank failed, he permitted the district to write warrants and the money to pay these warrants was taken out of the new depository. The same practice was followed as to all accounts except the current fund. With the current fund he would call warrants up to within \$35,000.00 of the amount that the Treasurer's books showed that was credited to the current fund and as a result of this practice, the current fund was made to stand the entire loss occasioned by the bank's failure.

The Court desires to know the procedure that they should take to remedy this situation. They desire to know if they should under the law charge up to each fund the proportionate amount that that fund should have borne of the loss?"

Section 9874 Revised Statutes Missouri, 1929, commands the County Court to appropriate, apportion and subdivide the county revenue collected and to be collected, for the purposes set out in Subdivisions 1, 2, 3, 4 and 5 of that Section.

This action is mandatory on the County Court.

State ex rel v. Lee, 262 S. W. 344, 345.

Section 9985 in the first part thereof is a re-statement in substance of Section 9874, Section 9985 further providing that the money so appropriated, apportioned and subdivided by the County Court should be held to be a sacred fund for the respective purposes for which it has been subdivided and the County Court shall have no power to divert the sums appropriated from the purposes for which they were appropriated, nor permit the funds thus set apart to be drawn from the Treasurer of the county except by warrants issued by order of the court on the respective funds.

Section 9986 directs the County Treasurer to separate and subdivide the revenues of the county in his hands and as they come to his hands, in compliance with the order of the court provided for in Section 9874 and the provisions of Chapter 59, the Treasurer being authorized to pay out such revenues only on warrants issued by order of the County Court on the respective funds so set apart and subdivided and not otherwise, and the Treasurer shall keep a separate account with the County Court of each fund, which fund shall be known and designated by the Treasurer by the names which the funds are referred to in Section 9874.

Section 9986 makes it a misdemeanor for the Treasurer to fail or refuse to perform the duties required of him by the provisions of Chapter 59.

Sections 12139, 12169 and 12170 make further provision that the Treasurer shall pay county revenue only on warrants issued by the County Court and Section 12139 provides that the warrant shall state on what fund the same is drawn and that the warrant should be paid out of that fund.

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Neither of the separate funds referred to in Section 9874 has preference or is entitled to priority as to the receipt of county funds over any other of the funds mentioned in Section 9874.

State ex rel v. Appleby, 136 Mo. 408, 413.

State ex rel v. Henderson, 160 Mo. 190.

In the event there is a surplus in one fund after its purposes have been exhausted, such surplus may be transferred to some of the other funds for which appropriation was made by the court.

Andrew County ex rel v. Schell, 135 Mo., 317.

Obviously, it was the duty of the County Court in your county to make the appropriations and apportionments as provided for in Section 9874; likewise it was the duty of the County Treasurer to carry the names of such funds on his books with the respective amounts appropriated therefor by the court. If there was not sufficient revenue collected to satisfy the appropriation and apportionment made for all of the funds, then the amount collected should have been pro rated among the different funds in the amount that the respective sums appropriated bore to the whole amount collected. The Treasurer was only entitled to pay the money in his hands out on the warrants of the County Court and the warrants should have designated on what funds they were drawn, and as issued and drawn by the County Court the Treasurer should have charged the same to the respective funds on which such warrants were drawn and charged to that fund only. If one of the designated funds became exhausted it could only be replenished by further collections of revenue or by the transfer of a surplus from one of the other funds to the exhausted fund.

The foregoing would apply whether any money of the county was tied up in a closed banking institution or whether it was not.

As we understand your letter we think the foregoing answers your inquiry.

Very truly yours,

GILBERT LAMB  
Assistant Attorney General.

APPROVED:

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Attorney General.

GL:LC