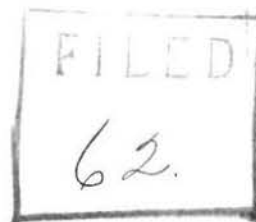


Counties. Refunds from State, taking over bridge to which county contributed, may be put in general revenue fund of county by county court. On transfer or paying back to other counties their contribution no commission allowable under 12316, A.S. 1929.

January 16, 1933

Hon. Joe H. Miller,  
Prosecuting Attorney  
Carroll County,  
Carrollton, Missouri.



Dear Sir:-

Your inquiry of December 22, 1932 of this Department reads as follows:

"The County Court has requested me as Prosecuting Attorney to write your office for an opinion regarding a recent refund payment to Carroll County by the State Highway Commission of Missouri.

"In July 1922 a special election in this county voted \$125,000.00 bond issue for the following purpose: "grading, construction, paving or maintaining of paved, graveled, macadamized or rock roads and necessary bridges and culverts in said county". This amount was used in helping construct a bridge across the Missouri river at Waverly, Missouri. These bonds have been retired. Carroll county also advanced a considerable sum of money toward the construction of said bridge.

"The refund to Carroll county from the State Highway Commission was paid to Carroll county in full on the basis of ninety per cent on the dollar in order that this county might obtain the money this year. The money was paid to the county Treasurer and ex officio collector.

"Is it possible under the law as stated in Revised Statutes of Missouri for 1929 at Section 12167 and 12174 or any other law to use any of the refund from the bond issue for any other purpose than that for which it was voted, that is, can the County Court order the Treasurer to place so much of this money into the general revenue for general use?

"The total amount received by the County included some money due other counties that advanced money through this county toward said bridge. The question has arisen whether or not the county Treasurer and ex officio collector would be entitled to any compensation, above that which he regularly receives,

for disbursing or transferring any of this refund money under R. S. Mo. 1929, section 12316 or any other law? It is my opinion that such payments or transfers do not amount to a disbursement."

Section 12167, R. S. 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 general revenue fund of the county, or to such other fund as may in their judgment be in need of such balance."

Section 12168, R. S. 1929 also provides:

"Nothing in the preceding section shall be construed to authorize any county court to transfer or consolidate any funds, not otherwise provided for by law, excepting balances of funds of which the objects of their creation have been fully satisfied."

In State ex rel. vs Appleby, 136 Mo. 408, 413, these sections were cited as express authority to the court to transfer a surplus from one fund to another to make up a deficiency therein and the court upheld a mandamus to issue warrants to pay certain criminal costs that had been duly certified to the county court for payment, which could be made by such transfer so authorized. The powers and duties of county courts so to adjust the county's finances are discussed in this case.

It is true that in Carthage Special Road District vs Ross, 270 Mo. 76, the court held that a road fund collected by tax levied therefor could not be transferred under these sections, and that the latter were modified by the later road laws. However, aside from the last suggestion, it appears in that case that there was no surplus in the road fund, even though a deficit existed in others, and that this road fund was needed for the purpose for which the taxes were levied and collected.

We do not find that Section 12174, R. S. 1929 has any application as it refers to township bonds only. In our opinion this refund may be transferred by the county court to the general revenue, if it so desires. The purpose of the bonds voted was accomplished and the money spent as voted. The object of the creation of the original bond fund having been fully satisfied, the refund from the State, after the bonds have been retired from the proceeds

of county taxation, is like a gift to the county of a general nature, so that putting it into the general revenue of the county seems to us the most equitable disposition of it, this giving the benefit to the taxpayers in general who paid the bonds.

It seems to us to be a surplus quite analagous to one left over after the extinction of county refunding bonds, which surplus Section 2903, A.S. 1929 says shall be paid into the general revenue fund of the county. In fact, a surplus in a fund after satisfaction of its objects has been held to be part of the general revenue fund of the county. 15 C.J. 584, note 67, (a). citing cases.

On your second question we agree with you that your county treasurer and ex officio collector is not entitled to any commission under Sec. 12, 316, A. S. 1929 or otherwise for receiving or transferring this refund money or paying over that portion to other counties which they had advanced, as such transfers or payments are not a disbursement, nor the receipt of the refund a collection of taxes within the law.

Respectfully yours,

DENTON DUNN  
Assistant Attorney General

APPROVED;

---

ROY McKITTRICK  
Attorney General

DD/mh