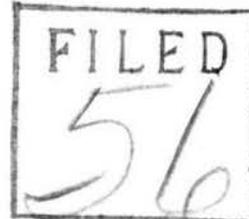


SECTION 12167, R.S.MO.1929: Transfer surplus \$1,000 remaining in the pauper fund may be transferred to any other fund which in the judgment of the county court be in need of the balance.

830
August 28th, 1934



Hon. Howard R. Maness
Prosecuting Attorney,
Ripley County,
Doniphan, Missouri

Dear Sir:

This Department is in receipt of your letter of sometime ago wherein you request our opinion or passing on the following facts:

" We have in the treasury of our county \$1000.00 credited to the pauper fund for the year 1932. All accounts on the pauper fund for that year have been paid in full, however, there is a deficiency in the salary fund for that year and there is also a deficiency in the pauper fund for the year 1933.

The question is; is it lawful to transfer the surplus in the pauper fund for the year 1932 to another year without first paying off all debts accruing under other funds for the year 1932.

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 decide that set 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'.

It is my understanding that each years revenue must take care of all debts for that year and that this must be done before the surplus in any special fund may be transferred to another year, however, I would appreciate your opinion in regard to this matter."

Section 12167 R. S. of Mo. 1929 as quoted in your letter gives the County Court the right to transfer any balance remaining in the pauper fund to the credit of the General Revenue Fund "or to such other fund as may in their judgment be in need of such balance".

It was said in the case of K.C. Ft. S. & M. R'y. Co. v. Thornton, 152 Mo. 1.c. 575:

" If the revenue collected for any year for any reason does not equal the revenue provided for that year and hence is not sufficient to meet the warrants issued for that year, the deficit thus caused can not be made good out of the revenue provided and collected for any other year until all the warrants drawn and debts contracted for such other year have been paid, or in other words, only the surplus of revenue collected for any one year can be applied to the deficit of any other year. Thus each year's revenue is made applicable, first, to the payment of the debts of that year, and secondly, if there is a surplus any year it may be applied on the debts of a previous year. The intended effect of all which is to abolish the credit system and to establish a cash system in public business."

By the above decision in our opinion, the \$1,000.00 in question could be used to take care of the deficiency in the pauper fund for the year 1933.

We shall next determine whether or not it is possible to transfer this fund to take care of the deficiency in the salary fund. In the case of Holloway v. Howell County, 240 Mo. 1.c. 614, the Court said:

" The bill alleges that the share of the district is still in the county treasury, but the proof shows nothing of the sort whatever mere theory be indulged by way of inference, one way or the other, the actual fact is, as shown by the proof, the money levied for county purposes was used for county purposes, presumably for paupers, insane persons, the salaries of officials, the expenses of running the courts, jury fees, expenses of elections, criminal costs and roads and bridges elsewhere. (Vide, R. S. 1909, sec. 11423) It was not clear there was any 'county revenue' left at the end of any year after paying the indebtedness and obligations of the county for the current year. But if there was, then under certain statutory conditions, the county court had the right to transfer it to other proper funds and use it for county purposes

for ensuing years or existing deficits, if any, after all contracts entered into with reference to the current year creating present indebtedness had been complied with and all outstanding current county obligations had been satisfied."

In the case of Decker v. Diemer, 229 Mo. l.c. 336, the Court in passing upon the question of transfer of funds 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 the 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."

One of the early decisions on the question is found in the case of State ex rel. v Appleby, 136 Mo. l.c. 412, wherein the Court said:

" We do not think section 363 can be given such a construction. We must assume that the legislature intended that all just and proper liabilities of the county, created in one year, should be paid out of the revenues and income of that year. The provisions for dividing and apportioning the revenues to be collected for the year into the various funds does not contemplate that a just demand against the county should go unpaid because the revenue appropriated to the particular fund, out of which it is primarily payable, may have been exhausted, if there be money in the treasury unappropriated, or not needed for the purposes for which it was appropriated, from which it can be paid. When it is found that there is a surplus in one fund, and a deficiency in another, there is nothing in the law, or other reason, why the court may not transfer the surplus in order to make up the deficiency.

August 28th, 1934

Indeed sections 3189 and 3190 expressly provide for such transfer."

CONCLUSION

We are of the opinion in view of the decision quoted herein and by the latitude given the county court under Section 12167, the \$1,000.00 in question could be transferred to any fund which in the judgment of the county court be in need of such balance; and it would therefore be lawful to transfer the surplus in the pauper fund for theyear 1932 to another year without first paying off all debts accruing under other funds for the year 1932 or to transfer to the salary fund or to any other fund which is in need of the balance.

Yours very truly,

OLLIVER W. NOLEN
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

OWN/mh