

COUNTY BUDGET LAW: Road District Fund and County Purpose Fund may be used for Class 5 and need not be kept separate from other funds, and if anticipated funds in Class 5 exceed 1/5 of anticipated revenue, the excess may be placed in Class 6.

January 3, 1935.



Hon. F.D. Sheible,
Treasurer of Jefferson County,
Hillsboro, Missouri.

Dear Sir:

A request for an opinion has been received from you under date of December 5, 1934, said request being in the following terms:

"As the Treasurer of Jefferson County, Missouri, will you kindly favor me with an opinion as to whether or not it is legal for county treasurers to transfer a County Road District Fund to the general purpose fund of the county?"

Formerly we had county revenue, county road and bridge, road district, special road district funds, etc., but with the ushering in of the Budget Law, the two first mentioned funds were consolidated into one fund known as the County Purpose Fund. Lately I have been advised that the Court desires to consolidate the Road District Fund with the County Purpose Fund. Your opinion as to the legality of latter mentioned transfer would therefore be very deeply appreciated."

The above letter was supplemented by a letter from you dated December 21, 1934, containing the following information:

"What we call our 'County Purpose Fund' is the budget portion of the county money or that portion under the Budget Law available for use in the various classifications, namely, 1 to 5. To give you an

idea of the county's financial possibilities from a tax collection standpoint, will say that we are levying as follows: County Revenue, 30 cents per \$100; Road & Bridge, 25 cents per \$100; Road District 20 cents per \$100. The County Revenue and the Road and Bridge have already been consolidated and yield a combined rate of 55 cents per \$100. The County Court has recently ordered the further consolidation of the Road District Fund with the two former; this results in a total budget levy of 75 cents per \$100.

I do not know under what law authority the levy of 20 cents per \$100 for Road District Fund was authorized, but I do know that for years the county has been maintaining a levy for this account. We formerly had some 79 road districts and the levy was run against taxpayers of said districts and spent in the several districts in the exact proportion as the amount collected for the district. The money being dispensed as a rule through the County Treasurer to road overseers appointed to supervise road work in the various districts. Some time ago the county began the maintenance method of caring for roads and at that time the road overseers were eliminated, but the road district fund and levy therefor remained, and the county as a rule hired men to work in each district every year, and these as a rule worked out most all monies collected for the district.

The money derived from the road tax goes into the 'Road District Fund.'

The County Budget Act of 1933 changed the financial structure of the various counties of the State, it being the intention of the Legislature to budget the various funds for the purpose of economy and efficiency. Section 9874, R.S. Mo. 1929 is expressly repealed. The classes created by the Legislature are somewhat similar to the classes under Section 9874, but under the new law each succeeding class has a priority of the lien on the county funds of the other classes, which was not the situation under the old section 9874.

Sec. 1, Laws of Mo. 1933, p. 340 contains the sentence, "whenever the term revenue is used in this act it shall be understood and taken to mean the ordinary or general revenue to be used for the current expenses of the county as is provided by this act regardless

of the source from which derived." We construe this provision of the Act to mean that all of the funds of whatever kind and nature are to be classified and expended according to Sec. 2 of the Act, which contains the classes, except as where expressly provided in the classes themselves that certain revenue is exempt.

Class 3, Sec. 2, Laws of Mo. 1933, p. 341 is as follows:

"The county court shall next set aside and apportion the amount required, if any, for the upkeep, repair or replacement of bridges on other than state highways (and not in any special road district) which shall constitute the third obligation of the county."

This class refers only to the repair and replacement of bridges, there being no provision made for roads, nor do any of the other classes refer to roads specifically.

Sec. 1 of the Budget Act also contains this sentence: "The county court shall classify proposed expenditures according to the classification herein provided and priority of payment shall be adequately provided according to the said classification and such priority shall be sacredly preserved." It therefore becomes the duty of the county court to sacredly preserve the priority of the various classes in the order mentioned and unless certain obligations are specific, or exempt from certain classes, it is necessary that the fund for that purpose be placed in Class 5 or 6.

Sec. 22, Laws of Mo. 1933, p. 351 provides as follows: "All laws or parts of laws and expressly sections 9874, 9985 and 9986 in so far as they conflict are hereby repealed.". Having construed the new County Budget Law as taking over the entire financial structure of the county, we are forced to the conclusion that all sections relating to road funds of the county are in conflict with, at least partially, this Act, and the funds derived from the revenue for road purposes should be disbursed according to the terms of the new County Budget Act.

As stated before, it is the duty of the county court to sacredly preserve the priorities as enumerated in the various classes. If the county court shall carry out this duty and successfully take care of all obligations in the succeeding classes, then any surplus funds in any given class may be used, if there be a deficiency, in any succeeding class, and we accordingly hold that it is not necessary to make any formal transfer. Having

reached the conclusion that the funds mentioned in your letter may be used if necessary to preserve priorities, and if such priorities have been sacredly preserved according to the classes, then the question arises as to where the surplus funds may be used.

Sec. 2, Class 5, Laws of Mo. 1933, p. 342 is as follows:

"The county court shall next set aside a fund for the contingent and emergency expense of the county, which shall in no case be more than one-fifth of the anticipated revenue. From this class the county court may pay contingent and incidental expenses and expense of paupers not otherwise classified. No payment shall be allowed from the funds in this class for any personal service, (whether salary, fees, wages or any other emoluments of any kind whatever) estimated for in preceding classes."

Sec. 5, Laws of Mo. 1933, p. 344 contains the following regarding Class 5 hereinbefore quoted:

"Contingent and emergency expense, not to exceed one-fifth of the total estimated revenue to be received. Purposes for which the court proposes the funds in this class shall be used shall be shown."

CONCLUSION

In view of the foregoing, it is the opinion of this department that the funds mentioned in your letter may be used or allocated to Class 5 and need not be kept separate from the other county funds. If the anticipated funds of Class 5 exceed one-fifth of the anticipated revenue, it is the opinion of this department that the excess may be placed in Class 6, wherein we note the following words: "After having provided for the five classes of expenses heretofore specified, the county court may expend any balance for any lawful purpose."

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General.

APPROVED:

Attorney General