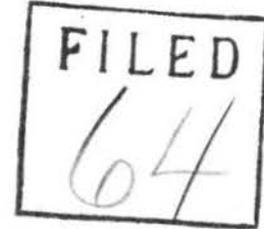


ROADS AND BRIDGES:) If bonds are voted for road purposes such is put in
FUNDS:) a "road construction fund" and can be used for no other
purpose whatever; moneys raised from taxes go into
special fund to pay for bonds and interest and
surplus may be disbursed by county court as it deems
wise.

April 28, 1937.

57



Honorable L. I. Morris
Prosecuting Attorney
Lafayette County
Lexington, Missouri

Dear Sir:

This is to acknowledge your letter as follows:

"The Honorable County Court of Lafayette County, Missouri, requests this letter of transmittal be handed you with the further request that you inform the county court as to their powers with relation to the expenditure of money now in their hands.

"The following set of acts will direct your attention to the source of this request. In August, 1921, Lafayette County, Missouri, under Revised Statutes of 1919, Sections 10744, and 10746 held a special election for the issuance of bonds specifying that the money received from the sale of such bonds was to be expended for road purposes in the construction of bridges, culverts and roads, as authorized under the statutes. Under Section 10691, Missouri Revised Statutes 1919 Lafayette County was authorized to join with the Ray County Court in the construction of a bridge over any water course forming a county boundary and to pay their proportionate cost under those sections of the statutes. You are also referred to Section 10889 and 10890 referring to the creation of the Highway Commission. Election was duly held in both counties, bonds were issued in accordance with the election and the money raised by the sale of said bonds was placed in the road construction fund for bridges and culverts, and as a result

the bridge across the Missouri River at Lexington, Missouri, was constructed. Lafayette County, Missouri, now finds itself in this position; they have \$173,981.87, in their county treasury and the bonds outstanding, together with interest at retirement date, will not require this sum of money. The court finds itself with a considerable sum of money over and above their obligations under these bonds, and they now wish to use this money for road purposes in other road districts in the county.'

"The question before the court is whether this sum, over and above the sum necessary to retire bonds and pay interest, can be pro-rated to road districts in Lafayette County for road repairs, reconditioning and for bridge maintenance and repair?"

"A further question is propounded as to whether the court could spend this money for any other purpose, for example--the purchase of right-of-ways and payment of damages under condemnation proceedings in the county. The third question proposed is as to whether the county court may expend this sum for any other purpose, for example--the repair of the county jail and court house.

"Your attention is directed to State ex rel Hackman, 245 S. W. 554 and State vs Drain, 73 S. W. (2) 804."

Sections 10744, 10746 and 10691, R. S. of Mo. 1919, referred to in your letter, are Sections 7957, 7959 and 7903 in the R. S. Mo. 1929. We have also read the cases referred to in your letter, "State ex rel Hackman, 245 S. W. 554 and State vs Drain, 73 S. W. (2) 804."

We gather from your letter that the county court by virtue of Sections 7957 and 7959, R. S. Mo. 1929, issued bonds

which were to be used primarily for the purpose of erecting a bridge over the Missouri River at Lexington, Missouri, jointly with Ray County, permitted by virtue of Section 7903, R. S. Mo. 1929. Section 7957 permits county courts to issue "bonds for and on behalf of their respective counties for the construction, reconstruction or improvement of the public roads and bridges in said county to an amount, including the existing indebtedness, of not exceeding ten per centum of the assessed valuation of such county." Section 7959 provides that when two-thirds of the voters, voting at the election, vote in favor of issuing the bonds the county court shall provide for a levy by a direct annual tax of a sufficient sum of money "to provide for the payment of the principal and interest of the bonds."

It is thus seen by a reading of Sections 7957 and 7959 that whenever a county is in need of funds for the construction and reconstruction or improvement of public roads and bridges that a bond issue may be had in which to raise funds. When a bond issue is had provision must be made for the levying and the collection of a tax on property in order to pay the principal of the bonds as well as the interest.

Section 7959 also provides:

"The proceeds of all bonds sold shall be paid into the county treasury and shall be used for the grading, construction, paving or maintaining of paved, graveled, macadamized or rock roads and necessary bridges and culverts in said county and for no other purpose whatever, and the proceeds of such bonds shall be kept in a separate fund to be known as the "road construction fund."

It is thus provided that the bonds are to be sold and the proceeds placed in a "road construction fund" and only the proceeds in said fund used on the roads. The proceeds in that fund can be applied to no other purpose whatever. The money received from the tax levied to pay the bonds and the interest would be in a different fund and would be used to retire the bonds and pay the interest and not used for road purposes.

As we understand your letter, the county has a surplus in the fund to retire the bonds and pay the interest. Consequently, no additional levy will be necessary in order to retire the bonds or pay the interest. The surplus in the fund is a special fund raised solely to pay an outstanding indebtedness. It is not a "road construction fund." Therefore, if we have

assumed the premise correctly, said surplus will be found in a special fund, and hence it is our opinion that Sections 12167 and 12168 will govern the disposition of said surplus.

Section 12167 reads as follows:

"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."

Section 12168 reads as follows:

"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 are and have been fully satisfied."

The Supreme Court of Missouri, en banc, in 1910 in the case of Decker et al. v. Diemer et al., 229 Mo. 296, said (p. 336):

"The bald question then is: May county courts 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 that question in the affirmative."

You state, "they have \$173,981.87 in their county treasury and the bonds outstanding, together with interest at retirement date, will not require this sum of money." Thus, the object for which the special fund was created has not now been

fully satisfied. In other words, the bonds are still outstanding. Therefore, not until the bonds have been fully satisfied, will there be a legal surplus in the special fund. True, it may be determined at this date that there is sufficient money with which to pay the bonds and interest. However, Section 12168 does not permit of a transfer of the surplus if the bonds have not been fully satisfied. We have not been able to find any statute or case which would authorize the transfer of this surplus while the objects (bonds) are outstanding and not fully satisfied.

We also invite your attention to Sections 4091 and 9987. Section 4091 provides that any member of the county court knowingly and without authority of law voting for the "appropriation, disposition or disbursement" of any money "to any use or purpose other than the specific use or purpose for which the same was devised, appropriated and collected, or authorized to be collected" shall be deemed guilty of embezzlement. Said section, however, has this proviso:

"Provided, however, that in any case when any money has been or shall have been collected by any * * * county for any specific use or purpose, and it is or shall have become impossible to use such money for that specific purpose * * * then the members of any * * * county * * may appropriate such money to any other legitimate use or purpose without becoming liable of the aforesaid penalties."

Section 9987 reads as follows:

"Any county court or judge thereof, or county treasurer, or county clerk, or other county officer, who shall order the payment of any money, draw any warrant or pay over any money for any purpose other than the specific purpose for which the same was assessed, levied and collected, or shall in any way or manner attempt so to do, shall be adjudged guilty of a misdemeanor, and on conviction thereof shall be punished as provided in section 9869."

In view of Section 12168, supra, it is our opinion that the moneys derived from the direct annual tax levied in which to pay the principal and interest of the bonds, constitute a special fund, and that until the bonds have been fully satisfied the surplus, if any, cannot be transferred.

Yours very truly,

James L. HornBostel
Assistant Attorney-General

APPROVED:

J. E. TAYLOR
(Acting)Attorney-General.

JLH:EG