

COUNTY BUDGET ACT: Surplus of funds after payment of judgment may be transferred to general revenue fund for retiring protested warrants; under Laws of 1933, p. 340, County Court may include such balance in estimate for ensuing year's expenditures.

January 13, 1939



Mr. W. F. Stevenson
County Treasurer
McDonald County
Pineville, Missouri

Dear Sir:

This Department is in receipt of your letter of December 30th, wherein you make the following inquiry:

"In the event a county votes bonds to pay a judgment, and after the judgments are satisfied to what use can the balance of funds be applied, can it be transferred to the general revenue fund for retiring protested warrants?"

"In making its estimate can the county court include such balance in their estimates for the year's expenditures?"

Since you state that the judgment for which the bonds were voted has now been satisfied and that there is a balance, we think the same can be transferred to the general revenue fund and used in any other fund which is in need of the same or for any legitimate purpose, under Sections 12167 and 12168, R. S. Mo. 1929. These sections are applied in the decision of Decker v. Diemer, 229 Mo. 296; likewise, in the decision of State ex rel. v. Appleby, 136 Mo. 408, wherein it is said:

"The county court may make transfers to the county contingent fund

from any surplus remaining in the other funds provided for in Revised Statutes, 1889, Section 7663, and can, after such transfers are made, pay proper demands on such contingent fund."

In the decision of *Holloway v. Howell County*, 240 Mo. 601, l. c. 612, it is 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 is 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. (State ex rel. v. Johnson, 162 Mo. 621; State ex rel. v. Appleby, 136 Mo. 408; Decker v. Diemer, 229 Mo. 296.)

"This view of the law but establishes a sensible and practical working plan

for transacting the business affairs of the county. In the Decker case the legality of a court house fund made up in part of the odds and ends of unused funds was sustained. There is in that case an extensive discussion of the statutes relating to the administrative details in handling county funds. We will not repeat what is there said."

Under the facts which you present we are of the opinion that the balance or surplus of funds, resulting after the payment of the judgment, can be transferred to the general revenue fund for retiring protested warrants. We are of the further opinion that under the County Budget Act, Laws of Missouri, 1933, page 340, the County Court can include such balance in the estimate for the ensuing year's expenditures.

Yours very truly,

OLLIVER W. NOLEN
Assistant Attorney-General

APPROVED:

J. E. TAYLOR
(Acting) Attorney-General

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