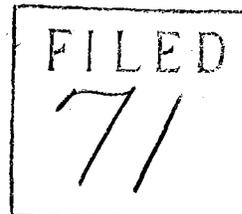


COUNTY BUDGET:  
AND COUNTY COURT:

RE: May transfer unexpended balance to road and bridge fund and building fund after all outstanding warrants have been paid.

November 8, 1945



Mr. J. T. Pinnell, Prosecuting Attorney  
McDonald County  
Pineville, Missouri

Dear Mr. Pinnell:

This will acknowledge receipt of your letter of October 18, 1945, requesting an official opinion of this department, which letter reads as follows:

"McDonald County has approximately \$3,000.00 in the Treasury, collected for County Revenue for the years 1942 and 1943; all warrants for said years have been paid.

"Can the County Court legally order a transfer of said surplus to the Road and Bridge Fund and the Building Fund?"

Section 10910, R. S. Mo., 1939, directs the county court to classify proposed expenditures according to the classification therein provided and further directs that priority of payment shall be adequately provided according to the said classification and such priorities shall be sacredly preserved. Said section reads in part as follows:

"\* \* \*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. Laws 1933, p. 340. Reenacted, Laws 1939, p. 656, Sec. 1."

You inform us in your request that the county has remaining in the county treasury approximately \$3,000.00 from collections made during the years 1942 and 1943, after all warrants for said years have been paid. You do not specify that all warrants for prior years thereto have been paid, apparently there are no outstanding prior warrants. Section 10911, as amended, page 650, Laws 1941, Class 6,

of the Budget Act specifies that after having provided for the five classes of expenses, heretofore specified, the county court may expend any balance for any lawful purpose, provided however, that if there are any outstanding warrants constituting legal obligations such warrants shall first be paid before any expenditure is authorized, under class 6. (pages 651 and 652, as amended, Laws 1941)

"Class 6. After having provided for the five classes of expenses heretofore specified, the county court may expend any balance for any lawful purpose: Provided, however, that the county court shall not incur any expense under class six unless there is actually on hand in cash funds sufficient to pay all claims provided for in preceding classes together with any expense incurred under class six: Provided, that if there be outstanding warrants constituting legal obligations such warrants shall first be paid before any expenditure is authorized under class 6."

Also in Section 10914 of the Budget Act as amended, Page 652, Laws 1941, Class 6, provides that no warrant may be drawn or any obligation be incurred in Class 6 until all outstanding lawful warrants for prior years have been paid. Class 6, under Section 10914 reads as follows:

"Class 6. Amount available for all other expenses after all prior classes have been provided for. No expense may be incurred in this class until all the prior classes have been provided for. No warrant may be issued for any expense in class 6 unless there is an actual cash balance in the county treasury to pay all prior classes for the entire current year and also any warrant issued on class six. No expense shall be allowed under class six if any warrant drawn will go to protest: Provided, however, if necessary to pay claims arising in prior classes warrants may be drawn on anticipated funds in class six and such warrants to pay prior class claims shall be treated as part of such prior funds. Nor may any warrant be drawn or any obligation be incurred in class six until all outstanding lawful warrants for prior years shall have been paid. The court shall show on the budget estimate the purpose for which any funds anticipated as available in this class shall be used."

In view of the foregoing provisions of the County Budget Act it is essential that all outstanding legal warrants be paid before any warrant may be drawn under class six, not only those warrants issued during the years 1942 and 1943 but for all the years prior thereto.

In *Holloway to use v. Howell County*, 240 Mo. 601, 1.c. 612 and 613, the court held that under certain statutory conditions the county court has a right to transfer any unexpended balances to other proper funds for county purposes and in so holding the court said:

"\* \* \* 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.)"

Section 13829, R. S. Mo. 1939, specifically authorizes the county court to transfer any balance in any special fund, where it is no longer needed for the purpose for which raised, to the general revenue or to such other fund as in its judgment may need said balance.

"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. R. S. 1929, Sec. 12167."

Repeal of statutes by implication are not favored in the law and conflicting statutes should be harmonized and each given effect as far as possible and where two statutes can be given a construction

to uphold both, such construction must be given.

In *City of St. Charles v. Inter Insurance Exchange etc.*, 108 S.W. (2d) 626, l.c. 627, the court said:

"(2,3) Nor does this construction of section 5976 necessarily bring it and section 6840 into repugnancy with one another. Apparently conflicting statutes should be harmonized and each given effect so far as possible, and where two statutes can be given a construction to uphold both, such construction must be given them. \* \* \* "

(Also see *State ex rel. Wells v. Walker*, 34 S.W. (2d) 124, 326 Mo. 1233).

Applying the foregoing rules of statutory construction we are of the opinion that section 13829, supra, was not repealed by the enactment of the County Budget Act, it certainly was not specifically repealed, and the law does not favor the repeal of any statute by implication. There is no conflict between the Budget Act and Section 13829, supra. Certainly there should be some authority for the county court to transfer any unexpended balance for some lawful county purpose after all the provisions under the Budget Act have been fully met, and Section 13829, supra, serves that purpose.

You inquire if the county court may transfer any surplus to the road and bridge fund and the building fund after all warrants for the years 1942 and 1943 have been paid. We are assuming, of course, that not only the warrants for 1942 and 1943 have been paid but also all outstanding legal warrants for prior years. In such case we are of the opinion that the county court may transfer any surplus to the road and bridge fund and the building fund, if in their judgment, such unexpended balance is needed in said funds. Section 8526, R. S. Mo. 1939, authorizes the county court to make a levy for county road and bridge fund. Also Section 13760, R.S. Mo. 1939, creates a county building fund.

#### CONCLUSION

It is, therefore, the opinion of this department that the county court is authorized, under Section 13829, R. S. Mo. 1939, to transfer

Mr. J. T. Pinnell

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any surplus in the County Treasury from revenue collected for the years 1942 and 1943, to the road and bridge fund and the building fund of the county, providing all warrants for 1942 and 1943 and prior years thereto have been paid.

Respectfully submitted,

AUBREY R. HAMMETT, JR.  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

ARH:mw