

COUNTY COURTS: Moneys placed in wrong funds may be
COUNTY FUNDS: withdrawn and correctly credited to
proper fund by a nunc pro tunc judgment of County Court.

July 10, 1947



Honorable R. M. Gifford
Prosecuting Attorney
Milan, Missouri

Dear Sir:

This will acknowledge receipt of your letter of May 6th requesting an opinion of this department and also your letter of May 26th supplementing your original request. Omitting caption and signatures, your letter of May 6th stated as follows:

"In March, 1947, the County Court of Sullivan County accepted a bridge in the county belonging to Big Medicine Drainage District #1 in consideration of the payment to the County of \$600. Upon receipt the Clerk placed such money in the general fund and now the Court desires to make an order withdrawing such sum and placing it in the road and bridge fund for use during the present year.

I advised them that it would not be so withdrawn. They desire your opinion."

Your letter of May 26th supplementing the above further stated the following:

"On the 9th day of May, 1947, you requested additional information before rendering an opinion as to transfer of funds from general fund to road and bridge fund for use during present year by County Court of Sullivan County.

On the 29th day of December, 1944, petition for mandatory injunction was sought by Sullivan and Grundy counties to compel Big Medicine Drainage District No. 1 of Grundy and Sullivan Counties to build, repair and maintain certain bridges where the District's ditch intersected public roads. This matter finally came before

the Supreme Court and was remanded to the lower court. In February, 1947, a judgment and decree was agreed upon and settlement reached in this matter and a part of this judgment recited that Sullivan County was to accept one of the bridges in issue upon the payment of \$600.00 by the District. That sum was later paid and was placed in the general funds of the county. At the time the budget was set for this year no agreement relative to this bridge or any of the matters then in litigation were in being and, therefore, could not have been considered by the Court in preparing the budget.

Trusting this is the information needed, I am."

It does not appear from your two letters exactly why the sum of \$600.00 was paid to Sullivan County or for what purpose such sum was to be used. However, from the wishes of the Court it would appear that this sum was to be used for the maintenance and upkeep of the bridge. Therefore, we must assume for the purposes of this opinion that such was the case.

You state in your letter of May 26th that the litigation relative to the bridge in question was terminated by a judgment and a decree agreed upon in February, 1947. Since the budget for Sullivan County for 1947 had already been set up, the money obtained through the aforesaid agreement could not have been contemplated when such budget was set. As a result there were no debts or liabilities of the County for which this sum would be responsible.

Again taking facts from your letters, we assume that when the County Clerk received the \$600.00, he or some other county official through error, deposited it to the credit of the General Fund instead of the Road and Bridge Fund. Consequently, this sum never became a part of the General Fund since it was credited to such fund by mistake. Now the question is can the County Court transfer this sum from the General Revenue Fund to the Road and Bridge Fund.

The only sections of the statute dealing with transfers of funds is Section 13829 and 13830, R. S. Mo., 1939, which provides as follows:

13829-"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."

13830-"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."

Although the aforesaid sections of the statute would indicate that the sum in question could not be transferred if it was needed for the liabilities under the General Revenue Fund, this department feels that such statutes refer only to money that is correctly in the particular fund in question. Where there is an error or a mistake, we feel that the County Court should be permitted to rectify the error and place the money in the correct fund.

We feel that the proper way for this sum in question to be placed in the Road and Bridge Fund is for the County Court of Sullivan County to enter a nunc pro tunc judgment and set aside the action of the Clerk in placing the money in the General Revenue Fund and order that it be placed in the Road and Bridge Fund. In case of *Webb vs. Elliott*, 75 Mo. App. 577, it was held that the law authorizes the Court to enter a nunc pro tunc judgment where the Clerk entered up the wrong judgment. Also in *Schulte vs. Schulte*, 127 S. W. (2d) 748, affirmed at 140 S. W. (2d) 51, the Court held that the power to correct a judgment nunc pro tunc is inherent in courts of record irrespective of statute.

Although, as far as we know, the erroneous placing of the controversial sum was not made by an order or judgment of the County Court of Sullivan County, yet this department feels that by a nunc pro tunc judgment, the Court may order the sum withdrawn from the General Revenue Fund and placed in the Road and Bridge Fund.

CONCLUSION

It is therefore the opinion of this department that the sum of \$600.00 which was placed in the General Revenue Fund of Sullivan County can be withdrawn therefrom and placed

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in the Road and Bridge Fund by a nunc pro tunc judgment of
the County Court.

Respectfully submitted,

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JSP/vb