

BONDS:  
COUNTY COURT:

Authority of county court to transfer money in general revenue fund to sinking fund for payment of interest and principal of bonds when same become due.

February 20, 1948



Honorable George P. Adams  
Prosecuting Attorney  
Audrain County  
Mexico, Missouri

Dear Sir:

This will acknowledge receipt of your request for an opinion, which reads:

"In 1946 Audrain County voted a \$500,000 bond issue and the county court did not set its levy high enough to provide sufficient revenue to permit the early maturing bonds and interest to be paid out of the sinking fund.

"This deficiency has existed for the past three years and will exist for a couple of more years. In the meantime the county court has been paying the deficiency out of the county revenue fund. After the early maturing bonds have been retired the rate of interest that the balance bears is such that the present levy will handle the retirement of the bonds and interest.

"This county is sufficiently solvent that the county revenue fund is not hurt by these payments.

"Will you please advise whether or not the county court has been acting properly in supplying this deficiency out of the county revenue? If so, are they entitled eventually to withdraw from the sinking and interest fund, when the same will exceed the amount necessary to meet bond retirement and interest, the amount theretofore drawn from the county revenue fund?

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"Please also advise what authority the county court has to raise the levy necessary for the purpose of providing for bond retirement and interest."

Under Section 3282, R. S. Mo. 1939, any county issuing bonds shall, at the time of issuing same, provide in the express manner provided by law for levying and collection of an annual tax sufficient to pay the annual interest on such fund bonds as it falls due, and the sufficient sinking fund for the payment of principal of such bonds when they become due.

Section 3283, R. S. Mo. 1939, provides that the proceeds of sale of bonds and money derived by tax levy for interest and sinking fund, shall be kept by the proper county authorities having control of said funds, separate and apart from all other funds. In no case shall the proceeds from the sale of any bonds so sold be used for any other purpose than for the purpose for which the bonds were voted, nor shall the sinking fund or interest collected, by reason thereof to meet the interest on said bonds, be used for any other purpose than to meet the interest and principal of said bonds.

You now inquire if the county court has exceeded its jurisdiction in transferring money out of the general revenue fund to cover a deficiency in said sinking fund, for the payment of interest and principal when same becomes due, in view of the fact the levy was apparently insufficient to cover this cost. You state, however, in the near future this deficiency will be corrected, and the present levy will then be adequate to retire the bonds and pay the interest thereon.

In State vs. Railroad, 315 Mo. 430, l.c. 434, 435, 286 S.W. 360, the court, in holding that an order purporting to levy a tax to meet the principal and interest does not limit the power to increase the rates subsequently thereto, said:

" \* \* \* The funding of such an indebtedness and the levying and collecting of taxes to pay the bonds issued pursuant thereto, are governed exclusively by Article IV, Chapter 8, Revised Statutes 1919. Section 1042 of that article provides that no such funding bonds shall be payable 'in less than five nor more than thirty years from the date thereof.' And Section 1045 commands that any county issuing such bonds, 'shall, at the time of issuing the same, provide in the express manner provided by law for the levy and collection of an annual tax sufficient to pay the annual interest on such

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funding bonds as it falls due, and a sufficient sinking fund for the payment of the principal of such bonds when they become due.' The only limitation imposed by the statute as to the amount of the annual tax is contained in the language: 'sufficient to pay the annual interest on such funding bonds as it falls due, and a sufficient sinking fund for the payment of the principal of such bonds when they become due.'

\* \* \* \* \*

"It could not have been the purpose of the Legislature in enacting Section 1045 to require the county court to fix in advance an annual rate of taxation which could not be changed during the life of the bonds, whether that was a period of five years or one of thirty. So many unknown factors are involved in every such situation that it could by no possibility be foreseen what annual rate throughout the entire period such bonds would run would yield an annual tax 'sufficient to pay the annual interest . . . and a sufficient sinking fund for the payment of the principal . . . when they become due.'

"One of the dominant purposes of the Constitution of 1875 and of legislation immediately following its adoption, was to extricate the counties from the morass of debts in which most of them were involved, put them on a cash basis and keep them on it. Pursuant to that general purpose they were permitted to fund their old indebtedness, but were required at the time of doing so to provide ways and means for promptly liquidating it. The County Court of Cass County would have complied with both the letter and spirit of Section 1045 if at the time of issuing its funding bonds it had made an order that thereafter there should be levied upon all the taxable property of the county an annual tax 'sufficient,' etc. The order as made was not therefore a limitation on the power of future county courts to fix such a rate from time to time as would yield under existing conditions an annual tax conforming to the requirements of the statute."

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While we are of the opinion that it would have been better for the county court to have increased the tax levy to provide sufficient money in the sinking fund for this purpose, providing such increased levy would not exceed the statutory and constitutional limitation, the county court was not exceeding its jurisdiction in transferring money from the general revenue to the sinking fund to be used for the purpose of paying interest and retiring the principal when it became due, provided all warrants and obligations incurred by the county for the current year and previous years had been honored and fully satisfied. The 61st General Assembly amended the Budget Act, page 651, Laws of Missouri, 1941. Under Section 10911, Class 6, we find the following:

"After having provided for the five classes of expenses heretofore specified, the county court may expend any balance for any lawful purpose: \* \* \* \* "

Furthermore, Section 13829, R. S. Mo. 1939, provides that when there is a balance in any county treasury to the credit of any special fund, no longer needed for the purpose for which it was raised, the county court by order may direct the balance transferred to the general revenue fund of the county, or to such other fund as in their judgment needs such balance. Section 13830, R. S. Mo. 1939, further provides that nothing in the preceding section shall authorize a county court to transfer or consolidate any funds not otherwise provided by law, excepting balances of funds of which the object of their creation are and have been fully satisfied. In State ex rel. vs. Appleby, 136 Mo. 408, l.c. 412, 413, the court said:

"We do not think section 7663 can be given such a construction. We must assume that the legislature intended that all just and proper liabilities of the county, created in one year, should be paid out of the revenues and income of that year. The provisions for dividing and apportioning the revenues to be collected for the year into the various funds does not contemplate that a just demand against the county should be unpaid because the revenue appropriated to the particular fund, out of which it is primarily payable, may have been exhausted, if there be money in the treasury unappropriated, or not needed for the purposes for which it was appropriated, from which it can be paid. When it is found that there is a surplus in one fund, and a deficiency in another, there is nothing in the law, or other reason, why the

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court may not transfer the surplus in order to make up the deficiency. Indeed sections 3189 and 3190 expressly provide for such transfer."

Therefore, assuming there are no outstanding warrants or obligations against the county for the current or previous years, we are of the opinion that the county court acted, in this instance, within its jurisdiction in transferring money from the general revenue fund to the sinking fund.

The law is well established that none of the money in this sinking fund, created for the purpose of paying interest and retiring the principal, can be transferred or used for any other purpose than the purpose for which the fund was raised. In Volume 61, Corpus Juris, Section 2235, page 1521, we find the following general principle of law which supports the foregoing conclusion, and reads in part:

"Taxes which are set apart by the constitution of the state for particular uses cannot be diverted by the legislature to any other purpose, and neither can funds derived from taxes levied and collected for particular purposes be legally utilized for, or diverted to, any other purpose, \* \* "

Also in State ex rel. Hopper vs. Cottengin, 172 Mo. 129, l.c. 135, the Supreme Court said:

"\* \* \* The fund in question was no part of the general revenue fund of the county. It was a special fund raised for a particular purpose, and neither the county court nor the county treasurer had any right to apply a dollar of it to any other purpose.\* \* "

At the present time, you are not primarily concerned about transferring money that was raised for the purpose of paying interest and retiring the principal, to another fund to be used for an entirely different purpose; however, eventually this question will arise, so you now make that inquiry. In view of the foregoing statutes authorizing the transferring of balances in funds no longer needed for the purpose for which they were raised, we believe that upon payment of all interest and principal, and there being no longer any need for the balance in said sinking fund for the purpose for which it was raised, that the county court may transfer the unexpended balance in said fund to any other fund for any lawful purpose that in their judgment may be needed.

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CONCLUSION

Therefore, it is the opinion of this department that the county court, under the foregoing conditions, was not exceeding its jurisdiction in transferring some unexpended money out of the general revenue fund to the sinking fund, to pay interest and principal of such bonds when it became due. However, the county court could have increased the levy if it found the present levy was inadequate, provided in so doing it did not exceed the statutory or constitutional limitation; and last, the county court may transfer any unexpended balance in the sinking fund to any other fund that in the judgment of the county court needs same. Of course, this can only be done when the county court is sure that the money in the sinking fund is no longer needed for the purpose for which it was raised.

Respectfully submitted,

AUBREY R. HAMMETT, JR.  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General