

- COUNTY BUDGET LAW:
- 1) County Court in second class county may use unexpended "emergency" fund for remodeling county buildings.
 - 2) Surplus funds remaining after payment of current indebtedness to be included in county budget for ensuing fiscal year.



December 2, 1953

Honorable Stewart E. Tatum
Prosecuting Attorney
Jasper County
Joplin, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this department reading as follows:

"The County Court is attempting to remodel more suitable quarters for the Western Division of the Circuit Court held in Joplin, Mo. It is anticipating spending \$110,000.00 in completing this work.

"In our present current budget for 1953, \$20,000.00 is immediately available under 'Repairs and Renewals,' and it is anticipated that an additional \$15,000.00 estimated surpluses from various accounts may be transferred after November 1st under provisions of Sec. 50.630, Mo. R.S., to Repairs and Renewals.

"The County has approximately \$75,000.00 accumulated surplus carried over that has not been budgeted from year to year, (allowing the County to operate a portion of the year without borrowing against the anticipated income). This surplus is transferred from year to year from the General Revenue Account into the Tax Anticipation Account for current use.

"QUESTION I

"Are all the provisions of the Statutes being fully complied with in making transfers as outlined in paragraph #2?

Honorable Stewart E. Tatum:

"QUESTION II

"In setting up the budget for the fiscal year, 1954, can the surplus account as mentioned and outlined in Paragraph #3, be set up as an anticipated revenue item for that current year and be budgeted out in expenditure items under 'Court-house repairs and renewals', for 1954?

"We would like an early opinion from the Attorney General's Office on the above questions and conditions."

In further conversation with the Honorable Rolland O. Shadday, Associate Judge of the Jasper County Court, we are informed that it is proposed to enter into a contract during the current fiscal year for the proposed remodeling of the building mentioned in your letter, but that no payments will be made under such contract in excess of \$35,000.00 during the current fiscal period. We are further advised the \$15,000.00 to be transferred is now carried as an "emergency fund."

We note from your letter of inquiry that a sum of \$20,000.00 is incorporated in the current budget for "repairs and renewals." That such an expenditure is proper for the proposal mentioned in your inquiry appears in Section 49.310, RSMo 1949, reading in part, as follows:

"* * * In pursuance of the authority herein delegated to the county courts, said county courts may acquire a site, construct, reconstruct, remodel, repair, maintain and equip said courthouse and jail, and in counties wherein more than one place is provided by law for holding of court, the county court may buy and equip or acquire a site and construct a building or buildings to be used as a courthouse and jail, and may remodel, repair, maintain and equip such building in said place or places. * * *"

We further note that some \$15,000.00 will be available after the payment of all indebtedness chargeable to the current fiscal year and that it is proposed to transfer

Honorable Stewart E. Tatum:

such surplus, which is now carried as an "emergency" fund, to "repairs and renewals" for use for the purpose mentioned.

We direct your attention in this regard to a part of Section 50.570, RSMo 1949, which reads as follows:

"* * * At any time during the year the county court may, on recommendation of the budget officer, make transfers from the emergency fund to any other appropriation; provided, that such transfers shall be made only for unforeseen emergencies and only on unanimous vote of the county court."

The foregoing seem to be the only statutes relating to making the transfer of funds contemplated.

With respect to the second question which you have propounded, we direct your attention to Section 50.610, RSMo 1949, dealing generally with the question of budgets in counties of the second class and containing the following provision:

"* * * Any cash surplus at the end of any fiscal year shall be carried forward and merged with the revenues of the succeeding year. * * *"

It is our thought that this provision not only authorizes inclusion of the unexpended surplus in the budget for the ensuing fiscal year, but mandatorily requires that due regard be given such surplus.

CONCLUSION

In the premises, we are of the opinion:

1) That the county court in a county of the second class is authorized to transfer from "emergency" fund to "repairs and renewal" fund any moneys found therein upon the recommendation of the budget officer as provided in Section 50.630, RSMo 1949, provided an "emergency" in fact exists; and,

2) That any surplus moneys remaining in any fund

Honorable Stewart E. Tatum:

at the end of a fiscal year are to be carried forward and merged into the budget for the ensuing fiscal year.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Will F. Berry, Jr.

Yours very truly,

JOHN M. DALTON
Attorney General

WFB:vlw:irk