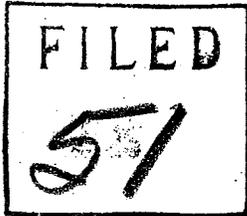


COUNTY BUDGET: 1. Surplus money received by a county treasurer
ROAD AND BRIDGE: from farmer donations under the County Aid Road
POOR PERSONS: Fund Act may not be placed in the road and bridge
fund of the county but should be distributed to
farmer contributors in proportions of the amount
donated.
2. County court may in its discretion under con-
ditions herein stated provide mild entertainment
for poor persons at county poor farm.
3. County court may transfer fund from Class 1,
2 and 4 into Class 5 prior to the end of the year
under certain conditions.



January 11, 1954

Honorable Alden S. Lance
Prosecuting Attorney
Andrew County
Savannah, Missouri

Dear Sir:

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

"I request that your office render
an opinion on three problems con-
cerning county government.

"1. Our County Treasurer has been
accepting the farmer donations under
what is commonly called the King Bill
Road aid program. When this money is
disbursed along with the State aid,
the County Treasurer often has amounts
ranging from 2 cents up to as much as
\$250 remaining in his hands. He is
anxious to know whether or not it would
be possible for him to transfer this money
into the Road and Bridge Fund of the
county.

"2. The County Court has been leasing what
was formerly the poor farm to an individual
who is now operating a private nursing home
there. The lease agreement provides that
the nursing home shall take care of the
county's indigent persons for their pensions.
The County Court wishes to know whether or not
it is proper for them to make donations for
the entertainment of these indigent patients
along with private patients who may be in the
nursing home.

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"3. The County Court also wishes to know whether or not they can transfer funds from Classes 1, 2 and 4 into the Class 5, the Contingent Fund, as needed during the year, or whether they must wait until the end of the year to make such transfers.

"An early opinion on the above three questions will be appreciated. A copy of this request is being sent to the Chief Auditor."

We shall answer the various inquiries contained in your request in their numerical order.

The General Assembly enacted what has commonly been referred to as the County Aid Road Fund Act, Sections 231.440, 450.470 & 490, V.A.M.S. Said fund was appropriated from part of the Missouri post-war fund for the purpose of aiding and assisting in the improvement, construction and restoration of county roads.

It provides under Section 231.450, supra., that the State Highway Commission and a committee of five county judges selected by the Governor which formulate general plans for the administration of the program under the foregoing statutes and furthermore requires said committee to take into consideration certain specific things in so formulating plans.

Under Section 231.470, supra., any county court desiring to become the recipient of benefits under this program is required to formulate a program for the improvement and construction of county roads and when prepared should be submitted to the State Highway Commission for approval. If such program meets with the provisions of the foregoing statutes, it should be approved by said highway commission whereupon the committee shall notify the State Comptroller, who shall certify his approval to incurring such obligation and who shall incur the funds appropriated to such county and such project, which amount shall not exceed two-thirds of the total costs of said project. Section 231.480 merely authorizes the county court to let the contract for such work.

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Under Section 231.490 supra., the State Highway Commission must approve the construction work upon its completion. If it is approved, then the committee is required to notify the comptroller who shall certify for payment a warrant drawn upon the state treasurer payable to the county treasurer. It further provides that payments thereon may be made as work progresses and such payments should be made in the same manner as provided upon the completion of said project.

Under Section 231.495, the Legislature has provided for additional benefits; however, the county must also spend a like amount for the same purpose.

No where in said act does it provide for farmer donations; however, it does require the county court to pay its proportionate share as provided therein. We understand that it is the general procedure for county courts to solicit donations from farmers who are anxious to obtain such benefits and maintenance of said county roads. In view of the absence of any specific statutory authority for obtaining farmer donations, naturally there is no statutory provision for the distribution of any surplus funds donated by farmers after payment of all costs.

Therefore, we are of the opinion that in case there is a surplus of farmer donations after payment of all costs of construction under the contract, that same cannot be classed as county or state revenue and the surplus should be returned to the respective farmers in proportion to the amounts donated.

You state that the County Poor Farm has been leased to an individual for a private nursing home at said poor farm under a lease agreement with the county which provides that said lessee shall take care of county indigent persons for their pensions. The question is, would it be proper and legal for the County Court to provide some entertainment for these indigent persons along with private patients in the home.

While your request refers to county indigent persons, we are assuming for the sake of this opinion only that you have reference to what is designated in the statutes as poor persons. The statutory definition of poor persons is as follows:

"205.590. Who deemed poor. -- Aged, infirm, lame, blind or sick persons, who are unable to support themselves, and

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when there are no other persons required by law and able to maintain them, shall be deemed poor persons."

It is the duty of the County Court to take care of indigent persons as provided under Section 205.580, 590, 600 and 610, RSMo 1949. State Ex rel. Gilpen, et al v. Smith, 96 SW (2d) 40, l.c. 41. (See also Section 205.660 and 670, RSMo 1949.)

Certainly if benefits under the Social Security Act in the form of Old Age Assistance is all that any of the poor persons have, with no other means of support, then most likely they come within the classification of poor persons as hereinabove designated and it becomes the duty of the county court to furnish them support. If it is determined that such persons do have support and money from such benefits and other income and assistance to adequately support them, then of course they cannot be considered poor persons.

While the county court has leased the county poor farm to an individual, consideration for such lease being that said individual will take care of the county indigent persons for their pensions and as a further consideration, he may also have private patients, this does not necessarily mean that the county court may not supplement this by providing additional support over and above the bare necessities of life.

We believe this does not come within the constitutional provision of allowing additional benefits over and above that provided by said lease or contract with this individual as prohibited under Section 39, Sub-section 3, Article III, Constitution State of Missouri. Since this is in no manner additional remuneration to the lessee of said poor farm but is for the benefit of such poor persons.

Therefore, we are of the opinion that the county court may in the exercise of its discretion furnish limited form of entertainment for such poor persons. If merely by reason of the fact private patients are in the home they also enjoy such entertainment at no additional costs to the County, then we can see no reason why this cannot be permitted. Of course, if the form of entertainment requires additional costs for private patients, then it would be illegal to furnish such

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private persons with this entertainment.

Replying to your third inquiry, Class 5 under Section 50.710, RSMo 1949, refers to the classification of estimated expenditures of the county and reads:

"Class 5. Contingent and emergency expense.--
The county court may transfer any surplus funds from class one, two, three, and four to class five to be used as contingent and emergency expenses. Purposes for which the court proposes the funds in this class shall be used shall be shown.

This department has ruled that in counties of Third Class, funds in Class 1, 2 and 4, may be transferred to Class 5 at the end of the fiscal year under certain conditions, see attached copy of opinion rendered to Hon. J. W. Wight, County Judge, Randolph County, Missouri, under date of February 4, 1944. We are enclosing a copy of an opinion rendered by this department to Hon. Wayne V. Slankard, Prosecuting Attorney, Newton County, Missouri, under date of November 21, 1938, holding that if it can be determined with reasonable certainty that after the transfer is made there will be sufficient funds remaining in said classes to carry out the terms of the Budget Act without jeopardizing the priority of payments, then funds may be transferred from such classes to another class before the close of the year. In view of this opinion, if all outstanding and future obligations can be determined with some degree of accuracy and said obligations can be paid from funds remaining in Classes 1, 2 and 4 after the proposed transfer to another class, then we believe that funds in such classes may be transferred to Class 5 before the end of the year.

CONCLUSION

It is the opinion of this department that:

1) Surplus funds received by the county treasurer as farmer donations under the County Aid Road Act must be distributed to the respective farmers that contributed such funds in proportion to their contributions and that such funds may not be placed in the Road and Bridge Fund of the county.

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2) That the county court may in the exercise of its discretion provide some mild form of entertainment for poor persons being cared for at the county poor farm by a lessee of said farm. However, such entertainment cannot be provided for private persons of said poor farm if it would entail additional costs by the county.

3) The county court may transfer funds from Class 1, 2 and 4 into Class 5 prior to the end of the year provided it can be determined with some degree of accuracy, that after the transfer is made there will remain in Class 1, 2 and 4 sufficient funds to carry out the terms of the Budget Act without jeopardizing the priority of payments.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Aubrey R. Hammett, Jr.

Very truly yours,

JOHN M. DALTON
Attorney General

ARH :sm