

COUNTY COURT: After allocating federal flood control
FLOOD CONTROL ACT: funds to schools and for roads, county
court may exercise discretion in using
balance for any proper county purpose.



March 1, 1956

Honorable J. S. Wallace
Member, House of Representatives
Sikeston, Missouri

Dear Mr. Wallace:

This is in response to your request for opinion dated
February 17, 1956, which reads as follows:

"A request has come to me for an opinion
on the new law regarding distribution of
federal revenue received by counties con-
cerning lakes and reservoirs.

"We are particularly interested concerning
Clearwater Lake Reservoir in Reynolds
County. The question is, does the county
court have authority to use the funds from
the Clearwater Lake Reservoir as they see
fit, for the needs of the county, or are
they required by law to divide the revenue
from this source among the respective funds."

Clearwater Lake Reservoir is a Federal Flood Control project.
The Federal Flood Control Act provides for the payment to the
states of seventy-five per cent of the proceeds received from
leased lands in such projects, to be paid to the states and dis-
tributed as the legislature may provide. This provision is found
in Section 701c-3 of Title 33, USCA, and reads as follows:

"75 per centum of all moneys received and
deposited in the Treasury of the United
States during any fiscal year on account of
the leasing of lands acquired by the United
States for flood control, navigation, and
allied purposes, including the development
of hydroelectric power, shall be paid at
the end of such year by the Secretary of

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the Treasury to the State in which such property is situated, to be expended as the State legislature may prescribe for the benefit of public schools and public roads of the county, or counties, in which such property is situated, or for defraying any of the expenses of county government in such county or counties, including public obligations of levee and drainage districts for flood control and drainage improvements: Provided, That when such property is situated in more than one State or county, the distributive share to each from the proceeds of such property shall be proportional to its area therein."

Pursuant to the federal statute, the Missouri Legislature has enacted statutes providing for the distribution of the funds received under this act by counties. The present provisions are found in Sections 12.080 and 12.100, RSMo, 1955 Supp. Said sections read as follows:

Sec. 12.080.

"All sums of money heretofore received or that may hereafter be received from the United States, or any department thereof under an act of congress approved August 18, 1941, being an act providing for the payment to the several states of seventy-five per cent of all moneys received for leases of land situated in the various states to which the United States owns fee simple title under the Flood Control Act of May 15, 1928, as amended and supplemented, to be expended as the general assembly may prescribe for the benefit of the public schools and public roads of the county or counties in which such government land is situated, or for defraying any of the expenses of county government in such county or counties, including public obligations of levee and drainage districts for flood control and drainage improvements, or as provided by any acts of congress authorizing the distribution of income or revenue from such lands owned by the United States of America or any of its departments, bureaus or commissions or any

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agency of the United States of America, to states or counties or as provided by any amendments to said acts, shall be expended as the county court of the county entitled to receive such funds may direct in accordance with the provisions and regulations as have been or may be in the future provided by the acts of congress providing for such distribution to states and counties."

Sec. 12.100.

"It shall be the duty of the county court of each county receiving any such moneys to use such funds to aid in maintaining the schools and roads and for defraying any of the expenses of the county in accordance with the provisions set forth in sections 12.070 and 12.080. The county court shall allow to the school districts and for roads an amount based upon their respective levies, equal to that which would ordinarily be allowed to them out of taxes from property owned by the United States if the property were privately owned before using any of such moneys for defraying other expenses of the county." (Emphasis ours.)

These sections were enacted by House Bill No. 109 of the 68th General Assembly. We have indicated the new material added by that bill by underscoring in the above quotations of the present statutes.

Under similar statutes, the courts have held that the federal statute leaves to the state legislature discretion as to the distribution of funds received. King County Washington v. Seattle School Dist. No. 1, 263 U.S. 361, 44 S. Ct. 127, 68 L. Ed. 399.

Prior to the 1955 amendments to the Missouri statutes, provision was made by the Missouri Legislature for the use of the funds for road and school purposes only. The 1955 amendments extended the purposes for which such funds might be used by the counties to encompass matters which had previously been authorized under the federal statutes.

By Section 12.100, supra, the Missouri Legislature has, in effect, given priority to schools and roads in the distribution of the funds received from the federal government. Upon the receipt of such funds, the county court is required first to allocate to the schools and for roads an amount computed as provided in said section. Insofar as any remaining balance is concerned, the

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Legislature has made no express provision regarding its allocation by the county court. Consequently, its allocation would be a matter within the discretion of the county court. The courts have recognized that the Constitution and the Legislature have entrusted some discretion to the county courts in the management of the county's fiscal affairs. Thus, in the case of State ex rel. Floyd v. Philpot, 364 Mo. 735, 266 SW2d 704, l.c. 710, the court stated:

"County courts are not now named among the 'constitutional courts' in which the judicial power of the state is vested, Article V, Constitution of Missouri 1945, V.A.M.S., but such courts are recognized in the Article treating with 'Local Government,' and they are given authority to 'manage all county business as prescribed by law'. Section 7, Article VI, Constitution of Missouri 1945, V.A.M.S. The authorities are uniform to the effect that, outside of the management of the fiscal affairs of the county, such courts possess no powers except those conferred by statute. * * *"

See also Everett v. County of Clinton, 282 SW2d 30, 41.

In view of the absence of any express direction by the Legislature as to the allocation by the county court of any balance of funds remaining after the allocation required to be made to the schools and for road purposes, we must conclude that the Legislature has left the question for the county court to handle in the sound exercise of its discretion. The court may, therefore, allocate such money to any of the county funds which the county court might select.

CONCLUSION

Therefore, it is the opinion of this office that, under the provisions of Sections 12.080 and 12.100, RSMo, 1955 Supp., the county court, after allocating flood control moneys received from the federal government to schools and for roads as required by Section 12.100, may use the balance available for such proper county purposes as the court in its discretion may select.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Robert R. Welborn.

Yours very truly,

JOHN M. DALTON
Attorney General