COUNTY COURT:
COUNTY CLERK:
TRANSFER OF FUND:

In county of class three the county court may, on recommendation of the county clerk, transfer funds from the emergency fund to the road and bridge fund, but only for unforeseen emergencies and only on a unanimous vote of the county court.

OPINION NO. 170

May 14, 1968

FILED
170

Honorable Carl D. Gum
Prosecuting Attorney
Cass County Courthouse
Harrisonville, Missouri 64701

Dear Mr. Gum:

This opinion is written to respond to your inquiry whether the clerk of a county court, as budget officer, may transfer funds from the emergency fund to the road and bridge fund.

We assume that implicit in your inquiry, there is the question whether the county clerk as a budget officer may transfer such funds on his own initiative and at his discretion. Also, we assume that your inquiry is limited in its application to a county of the third class, since Cass County is of that class.

Section 50.540, RSMo Supp. 1967, which is the pertinent statute involved here, reads as follows:

> "1. On or before September first of each year in counties of class one, and on or before December first in counties of class two, and on or before the fifteenth day of January in counties of classes three and four each department, office, institution, commission, or court of the county receiving its revenues in whole or in part from the county shall prepare and submit to the budget officer * * *."
>
> "4. * * * At any time during the year the county court in counties of class one may make transfers from the emergency fund to any other appropriation, and in counties of classes two, three and four the county court may make these transfers on recommendation of the budget officer; but the transfers in all classes shall be made only for

unforeseen emergencies and only on unanimous vote of the county court." (Emphasis added)

This statute thus provides that the county court may make these transfers on the recommendation of the budget officer. While the statutory use of the word "may" is permissive, it is our view that the legislative intent is the discretion rests with the county court, whether such transfer "may" be done. It is not a question in our opinion whether some other county officer or body may likewise have the authority to transfer the fund under the above statute. Thus, we consider the use of the word "may" in the statute above to indicate that the discretion to be exercised rests entirely within the ambit of the authority of the county court. Specifically, the county clerk as budget officer, may make recommendations to the county court, but it is the court that approves and directs the transfer of the funds from the emergency fund to the road and bridge fund.

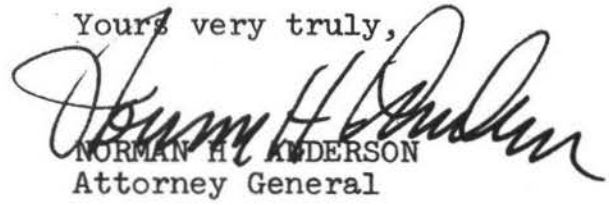
We predicate our opinion on a familiar legal maxim to the effect that where a statute enumerates the subjects or things on which it is to operate, or person effected, or forbids certain things, it is to be construed as excluding from its effect all things not expressly mentioned. See Brown v. Morris, 290 S.W.2d 160, 166. This responsibility for the exercise of discretion on the part of the county court may not be delegated or transferred. Thus, the county court cannot delegate its discretionary or legislative power and any delegation thereof would be void. City of Springfield v. Clouse, 206 S.W.2d 539, 545. We conclude that although the county clerk as the budget officer may make recommendations to the county court on the matter, the question of the transfer of funds rests solely in discretion of the county court.

CONCLUSION

It is the opinion of this office that:

In county of class three the county court may, on recommendation of the county clerk, transfer funds from the emergency fund to the road and bridge fund, but only for unforeseen emergencies and only on a unanimous vote of the county court.

Yours very truly,



NORMAN H. ANDERSON
Attorney General