

COUNTY COURT:) County Court has authority to transfer surplus
) funds remaining at the end of the year to
ROADS AND BRIDGES:) road and bridge fund, and the same may be used
for the erection of bridges in special road
districts.

3/10
January 21, 1938



Honorable Leo J. Harned
Prosecuting Attorney
Pettis County
Sedalia, Missouri

Dear Sir:

This Department acknowledges receipt of your letter of January 15th, requesting an opinion on the following question:

"1. Does the County Court of Pettis County have the authority to contribute money for the purpose of building a bridge in the County in a Special Road District after all of the budget requirements have been met and there is a surplus of \$33,000.00 of unexpended funds in the treasury?"

We refer to the Budget Act, especially Class 3, Laws of Missouri, 1933, page 341, as follows:

"The county court shall next set aside and apportion the amount required, if any, for the upkeep, repair and replacement of bridges on other than state highways (and not in any special road district) which shall constitute the third obligation of the county."

We also refer to Class 6, page 342, which is as follows:

"After having provided for the five classes of expenses heretofore

specified, the county court may expend any balance for any lawful purpose. Provided however, that the county court shall not incur any expense under class six unless there is actually on hand in cash funds sufficient to pay all claims provided for in preceding classes together with any expense incurred under class six. Provided, that if there be outstanding warrants constituting legal obligations such warrants shall first be paid before any expenditure is authorized under class 6."

By the provisions of Class 3 it will be noted that, so far as the annual budget is concerned, the county court is prohibited from expending any money from the ordinary or general revenue on any bridge in any special road district. By the terms of Class 6 the county court is empowered to expend any balance for any lawful purpose. We assume that the \$33,000.00 mentioned in your letter is an actual surplus and that the county has now no outstanding warrants or obligations of previous years. Hence, the question resolves itself into, the authority or right of the county court to donate, grant or give aid to the special road district in building a bridge?

We further assume that the \$33,000.00 mentioned is a surplus from the ordinary or general revenue of the county and not derived from the levies of the road and bridge and special road and bridge as authorized by the Constitution and the statutes. If it is surplus funds derived by the road and bridge levies, then it is more than possible that Section 8039, R. S. Mo. 1929, would govern the situation. Said section is as follows:

"Said board may, by contract or otherwise, under such regulations as the board shall prescribe, build, repair and maintain, or cause to be built, repaired, or maintained all bridges and culverts needed within said district: Provided, however, that the county court of the county in which said special road district is located may, in its

discretion, out of the funds available to it for that purpose, construct, maintain, or repair, any bridge, or bridges, or culbert or culverts in such road district, or districts, or it may, in its discretion, appropriate out of the funds available for that purpose money to aid and assist the commissioners of said special road district, or districts, which shall be expended by the commissioners of said special road district, or districts, as above provided."

You will note that the statute uses the phrase "out of the funds available to it for that purpose"; the surplus which you mentioned is not designated as being in the general revenue fund, road fund, or any other fund of the county. Hence we approach it from the angle that it is merely a surplus of funds belonging to the county when all just demands and obligations have been met.

Under Section 12167, R. S. Mo. 1929, the court has power to transfer funds. Said section reads as follows:

"Whenever there is a balance in any county treasury in this state to the credit of any special fund, which is no longer needed for the purpose for which it was raised, the county court may, by order of record, direct that said balance be transferred to the credit of the general revenue fund of the county, or to such other fund as may, in their judgment, be in need of such balance."

The authority of the county court to transfer a surplus and what constitutes a "surplus" is contained in Decker

v. Diemer, 229 Mo. 296, l. c. 336, as follows:

"The bald question then is: May a county court transfer a surplus and divert it from a fund, having a designated and given purpose, to another legitimate county purpose, by force and reason of the satisfaction of the original use or purpose? We answer that question in the affirmative. We are of the opinion that the force of the Cottey Act is spent in another direction, as the history of the times of its enactment well shows, and that it ought not to be construed as prohibiting such transfer of funds. We are further of the opinion that the various statutes providing for the transfer of funds, when practically construed, lend substance and countenance to the view we have expressed. We are further of the opinion that sections 6723 to 6729 inclusive, supra, now a part of article 2 of chapter 97, entitled 'Counties,' is a live law though old. The chapter and article have been revised and amended from time to time and brought down for every day use. The Cottey act was not intended to repeal it and the provisions of the two are not antagonistic or inconsistent. Repeals by implication are not favored. It is our duty to harmonize and preserve the whole body of the law, when we can. We are further of the opinion that when all warrants and debts properly chargeable to a fund in any one year are paid and provided for, the residue of such fund is a 'surplus' within the

purview of the transfer sections. Is not the building of a courthouse as legitimate as any other county purpose? Are bonds so desirable that the people of a Missouri county must bond themselves when bonds are not necessary, or go without a courthouse? Must they levy special taxes when they have the means in the treasury to avoid such special levy? Running like a thread through the statutes is the idea of as low a rate of taxation as is compatible with the welfare of the people, and the other idea that the county's business must be done for cash. All these ideas are conserved by the holding made."

From your letter there does not appear to be any deficiency in any fund.

The right to transfer funds is also discussed in the case of *State ex rel. v. Appleby*, 136 Mo. 408, l. c. 412, as follows:

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

Conclusion.

It is fortunate that your county is in such a splendid financial condition. Ordinarily the logical disposition of the surplus would be to consider it in computing the estimates of the present fiscal year and thereby give the taxpayers the benefit of the surplus by reducing the levy. But we are of the opinion that under Section 12167, supra, the county court could legally transfer to the proper fund whatever amount it deems sufficient to erect or build bridges in the special road districts.

Respectfully submitted

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APPROVED:

J. E. TAYLOR
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