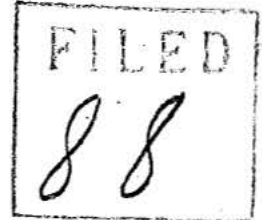


COUNTY BUDGET LAW: County courts may not transfer funds from
ROADS AND BRIDGES: Class 3 of the Budget to any other class
under the budget law.

November 14, 1947



Honorable B. C. Tomlinson
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Dear Sir:

This is in reply to your letter of recent date wherein you submit to this department a request for an opinion on the following question:

"Can a surplus of money in the Road and Bridge Fund of a county of the third class be transferred by order of the County Court to the County Revenue Fund in order to pay necessary expenses of the county?"

The County Budget Law, which was originally enacted in 1933, Laws of Missouri, 1933, page 340, was enacted for the purpose of setting up a system of accounting and bookkeeping for the various counties of the state. The court, in the case of State ex rel. vs. Smith, 182 S.W. (2d) 571, 574, in speaking of the purpose of the law, said:

" * * * The primary purpose was to regulate the usual operation of the regular departments of Government whose needs could be foreseen and planned on a biennial basis. * * * "

The same rule applies to counties as to departments of government. Section 10910 of the Budget Act was amended in 1945, Laws of Missouri, 1945, page 610. This section as amended reads as follows:

"This law may be cited and quoted as the county budget law. All counties of the third and fourth classes shall be governed by Sections 10910 to 10917, inclusive, of this article. Whenever the term revenue is used in this article it shall be understood and taken to mean the ordinary or general revenue to be used for the current expenses of the county as is provided by this article regardless of the source from which derived. The county courts of the

several counties of this state are hereby authorized, empowered and directed and it shall be their duty, at the regular February term of said court in every year, to prepare and enter of record and to file with the county treasurer and the state auditor a budget of estimated receipts and expenditures for the year beginning January 1, and ending December 31. The receipts shall show the cash balance on hand as of January first and not obligated, also all revenue collected and an estimate of all revenue to be collected, also all moneys received or estimated to be received during the current year. The clerk of the county court of the several counties of this state shall be the budget officer of such county and as such shall prepare all data, estimates and other information needed or required by the county court for the purpose of carrying out the provisions of this article but no failure on the part of the clerk of the county court shall in any way excuse the county court from the performance of any duty herein required to be performed by said court. The county court shall classify proposed expenditures according to the classification herein provided and priority of payment shall be adequately provided according to the said classification and such priority shall be sacredly preserved."

Section 10911, R. S. Mo. 1939, of the Budget Act was amended in 1941, Laws of Missouri, 1941, page 650. Section 3 of said Section 10911, which relates to funds for road and bridge purposes, reads as follows, Laws of Missouri, 1941, page 651:

"The county court shall next set aside and apportion the amount required, if any, for the unkeep, repair or construction of bridges and roads on other than state highways (and not in any special road district). The funds set aside and apportioned in this class shall be made from the anticipated revenue to be derived from the levies made under Sections 8526 and 8527 R. S. Mo. 1939. This shall constitute the third obligation of the county."

From this section it will be found that funds for road and bridge purposes were to be derived from revenues obtained under authority of Sections 8526 and 8527, R. S. Mo. 1939. These were the taxes derived under levies designated as general road and bridge levies and special road and bridge levies. Said Sections 8526 and 8527 were repealed by the 63rd General Assembly, Laws of Missouri, 1945, page 1478. Under Section 12 (a) of Article X of the Constitution of Missouri, 1945, provisions are made for raising of revenue for road and bridge purposes. The taxes derived under this authority are in lieu of the taxes authorized under Sections 8526 and 8527, R. S. Mo. 1939. Said Section 12 (a) provides in part as follows:

"In addition to the rates authorized in section 11 for county purposes, the county court in the several counties not under township organization, the township board of directors in the counties under township organization, and the proper administrative body in counties adopting an alternative form of government, may levy an additional tax, not exceeding thirty-five cents on each hundred dollars assessed valuation, all of such tax to be collected and turned in to the county treasury to be used for road and bridge purposes. * * * "

In order to supplement the foregoing constitutional provision, the 63rd General Assembly, by H.C.S.H.B. No. 784, Laws of Missouri, 1945, page 1478, enacted the following law, Section 8527. This section reads as follows:

"In addition to other levies authorized by law, the county court in counties not adopting an alternative form of government and the proper administrative body in counties adopting an alternative form of government, in their discretion may levy an additional tax, not exceeding thirty-five cents on each one hundred dollars assessed valuation, all of such tax to be collected and turned into the county treasury, where it shall be known and designated as 'The Special Road and Bridge Fund' to be used for road and bridge purposes and for no other purpose whatever;

provided, however, that all that part or portion of said tax which shall arise from and be collected and paid upon any property lying and being within any special road district shall be paid into the county treasury and four-fifths of such part or portion of said tax so arising from and collected and paid upon any property lying and being within any such special road district shall be placed to the credit of such special road district from which it arose and shall be paid out to such special road district upon warrants of the county court, in favor of the commissioners or treasurer of the district as the case may be; Provided further, that the part of said special road and bridge tax arising from and paid upon property not situated in any special road district and the one-fifth part retained in the county treasury may, in the discretion of the county court, be used in improving or repairing any street in any incorporated city or village in the county, if said street shall form a part of a continuous highway of said county leading through such city or village."

From a reading of this section, it will be found that the moneys derived under this section are placed in the county treasury and designated as the special road and bridge fund. It also provides that this fund is to be used for road and bridge purposes and no other purpose whatever. This is the fund which now goes into and makes up the revenue for Class 3 demands under the Budget Act. Since the Constitution says that this fund is to be used for road and bridge purposes, and since the 1945 act specifically provides that this fund shall be used for no other purpose, then there would be no authority for the county court to transfer these funds out of Class 3 to any other class of demands of the county. The county court is only authorized to handle the accounts in the county budget as is prescribed by statute. The rule as to the powers and duties of county courts was stated by the court in the case of Morris et al. vs. Karr et al., 114 S.W. (2d) 962, l.c. 964, as follows:

"In Sturgeon v. Hampton, 88 Mo. 203, at page 213, the rule was early announced which has been generally recognized in

this state as follows: 'The county courts are not the general agents of the counties or of the state. Their powers are limited and defined by law. These statutes constitute their warrant of attorney. Whenever they step outside of and beyond this statutory authority their acts are void.' The court goes on to say that it should go far to uphold the acts of the county court when they are merely irregular, but such acts are not irregularities and are void when made without any warrant or authority in law."

CONCLUSION

It is the opinion of this department that since road funds are raised for a specific purpose and expenditures thereof for any other purpose are prohibited, and since these funds are placed in Class 3 of the Budget Law, county courts would not have any authority to transfer any of these funds to the county revenue fund or any other class of demands under the County Budget Law.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
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