

COUNTY FUNDS: Transferring of county funds from
one fund to another

June 27, 1935



Hon. Elliott M. Dampf
Prosecuting Attorney
Cole County
Jefferson City, Missouri

Dear Sir:

This is to acknowledge your letter dated June 24, 1935 as follows:

"I would like to know whether a county court can transfer the money in the sinking fund to another fund, or whether the money can be used for another purpose, such as the building of a new jail."

Your letter does not contain sufficient facts upon which we can intelligently base an opinion. A request for an opinion should contain facts so that nothing is assumed when answering same. Hence, we only answer your letter by citing you the applicable statutes and court decisions on the transferring of from one fund to another, as you have not apprised us as to what sinking fund it is intended to transfer the money from, or whether or not the money in said sinking fund is no longer needed for the purpose for which it was raised, so that we can not assume these two major premises in writing this opinion.

There are two statutes in Missouri that bear on the question of transferring of funds and same being in pari materia, to-wit, Sections 12167 and 12168 R. S. Mo. 1929.

Section 12167, supra, provides 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."

Section 12168, supra, provides as follows:

"Nothing in the preceding section shall be construed to authorize any county court to transfer or consolidate any funds not otherwise provided for by law, excepting balances of funds of which the objects of their creation are and have been fully satisfied."

The above sections were before the Supreme Court (en banc) for consideration on a question similar to the one contained in your request in the case of Decker v. Diemer 229 Mo. 296. We quote from said decision beginning at page 335:

"Learned counsel for appellants maintain that there were only three ways to create a fund for building a courthouse - one, a sale of bonds voted by the people; another, by direct tax voted by the people - both as provided by the Constitution; the other, a petition by the prosecuting attorney and the county court to the circuit court and an order by that court adjudging the levy necessary and lawful under the Cottey Act. Contra, counsel for the respondents maintain that there is still another legal way, viz., under the provisions of Revised Statutes

1899, sections 6723 to 6729 inclusive, supra, (these two sections 12167-12168, respectively, R. S. Mo. 1929) the provisions of which we have hereinbefore set forth. They say that if the county has the money it need not borrow or levy special taxes by a vote of the people, but may act sensibly by using its funds on hand for such legitimate county purpose. At this point counsel cross swords on another proposition, viz.: Respondents go a step further and say that surpluses, not used or needed for the purpose for which the funds were apportioned and appropriated by the county court from year to year, may be gathered into a courthouse fund and such aggregation may be construed as the 'sufficient funds in the county treasury for that purpose' mentioned in section 6723. Counsel for appellants deny that. They say that such funds are 'sacred' and must be carried forward from year to year to be used as originally appropriated so that the so-called surplus should be used to reduce the current tax levy for county purposes and not for building a courthouse. In this connection by virtue of diverse interpretations, both sides confidently rely on the statutes relating to the transfer of funds, * * * *

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"We shall not write the law so that county courts may make excessive levies for county purposes for the very purpose of evading the statutes and creating a surplus to build a courthouse, thereby, under the seeming forms of law, evading the spirit and intent of the law. We have already disposed of the features of this case in that particular, and shall proceed to determine the question now up by assuming that the levies were honestly made from year to year, and that the surpluses were honestly accumulated as indicated.

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.
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"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."

See also State ex rel. v. Appleby 136 Mo. 408, Holloway v. Howell County 240 Mo. 601.

Yours very truly,

James L. HornBostel
 Assistant Attorney General

APPROVED:

JOHN W. HOFFMAN, Jr.
 (Acting) Attorney General

JLH:LC