

COUNTY BUDGET ACT: County court cannot return money transferred under Section 13829 to drainage districts after money has been taken into consideration for estimates for 1941. Can give drainage districts any surplus remaining in classes.

March 13, 1941



Mr. O. C. Ferguson
Treasurer, New Madrid County
New Madrid, Missouri

Dear Sir:

This department is in receipt of your letter of February 24th, wherein you make the following inquiry:

"A peculiar situation has developed in this county, on which I shall need an opinion. The Drainage Districts referred to in this letter have reference to districts organized by the county court.

On June 4th, 1940, three of the Drainage Districts, Nos. 10, 12 and 23, had some \$10,000.00 in surplus money after having paid all the bonds and other obligations of these districts. At this time a new district had been organized in which the lands in these three districts had been incorporated into a new district known as Drainage District No. 39, which issued some \$25,000.00 in bonds to reclean the ditches of this new district, which represented old districts Nos. 10, 12 and 23.

Naturally at the time of the issuance of the bonds, it was estimated that the bonds issued would be sufficient to do the work. At that time the county court made an order of record and issued

warrants on these districts to transfer such balances to the General Revenue Fund of the county (which, of course, means Classes 1 to 5, inclusive) and such transfer was purported to be done under Section 12167. At that time it was the full intention that this money should remain in the several classes to pay some outstanding warrants and to place the county on a cash basis. As treasurer, I issued the proper receipt and used the proceeds transferred to pay the outstanding warrants for the year 1940.

Now since that transaction, the Drainage Engineer finds that he underestimated the amount necessary to clean out the ditches, and requested the court for additional funds, and they in turn then requested the county clerk (orally) to issue warrants in favor of the above drainage districts in the sums heretofore transferred and against the General Revenue Fund. He refused to issue such warrants, stating that this money had been taken into consideration in making up the budget for the year 1941, and the several allowances had been made under the budget and that if this amount or amounts were transferred by him at this time, and by warrant, that it would just mean that much spent above the budget, and that he would be liable for the same, at least, to the extent of his bond.

Then the court purported to make an order of record wherein they ordered me, as county treasurer, to transfer such funds from the General Revenue Fund to the drainage districts from which they were originally

derived.

Would there be any liability on me, as treasurer, under the above circumstances, to transfer such amounts from the General Revenue Fund to the districts involved?"

You do not state in your letter whether the original transfer made by the county court was with the consent of the drainage districts. However, we assume there was no protest, or at least acquiescence, because you mention the fact the engineer of the drainage districts determined later that he had underestimated the amount necessary to clean the ditches.

Under the decision of Carthage Special Road District of Jasper County vs. J. C. Ross, 270 Mo. 76, Section 12167, now Section 13829, R. S. Mo. 1939, has always been a valid and live law. We have ruled several times that the County Budget Act, Sections 10910-10918, inclusive, R. S. Mo. 1939, applying to counties of less than 50,000, did not repeal Sections 12167 and 12168, Laws of Missouri, 1929, and, as a result, any funds remaining after the purpose for which they originally were levied were no longer needed, could be transferred by the county court. Therefore, the funds of the Drainage District which were transferred by the county court, if subject to transfer, were legally transferred to the General Revenue Fund, or as the statute mentioned, to such other fund as may in its judgment be in need of such balance.

Perhaps it is pertinent that we mention Section 12432, R. S. Mo. 1939, which is as follows:

"When the improvements of a district have been completed and paid for, and all costs and expenses of the district paid, if there remains on hands to the credit of such district any funds not needed, the county court may prorate back to the taxpayers all or any part of such funds not needed or may use the same for maintenance in lieu of the maintenance taxes."

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Another pertinent section being 12422, the effect of which is that the treasurer of the county in which a drainage district is located shall act as treasurer of the district and shall be the custodian of the funds of this district except as otherwise provided in this article.

We assume that the county court and officers of the district were familiar with these sections at the time of the transferring of the funds in question.

There is no provision in the County Budget Act for any changes or alterations once the estimate is approved by the court and a copy filed with the State Auditor. We assume that the funds which were transferred were considered in the estimate under the budget made by the county court the first of February, 1941, and, as stated above, is now a part of the funds so budgeted.

Bearing in mind what we have heretofore said, we are of the opinion that if the county court desires to aid the drainage districts at the present time, it will be necessary to obtain the funds from a definite surplus in some of the classes under Section 10911, R. S. Mo. 1939. Class 5 contains the provision "county court may transfer any surplus funds from Classes 1, 2, 3 and 4 to Class 5 to be used as contingent and emergency expenses." Class 6 permits the use of funds for any lawful purpose provided no outstanding warrants for previous years are unpaid. If this method be used by the county court, we do not think that the county treasurer will incur liability on his bond under the last paragraph of Section 10917, R. S. Mo. 1939. If no available surplus in any of the classes now prevails, we suggest as the only advisable method to await the close of the fiscal year and determine whether any surplus results, and such surplus, if any, may be used in aid of the drainage districts.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

VANE THURLO
(Acting) Attorney General

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