

COUNTY COURT: County Court cannot divert to the
County Revenue Fund money collected
BONDED INDEBTEDNESS: to pay off bonded indebtedness.
TAXATION:

February 3, 1944



Honorable J. E. Killion
Presiding Judge
County Court of Texas County
Houston, Missouri

Dear Sir:

We have for attention a letter from Mr. C. W. Burkhead, a member of the Constitutional Convention, in which he requests the opinion of this department and directs us to send the opinion to the County Court of Texas County. His request is as follows:

"The County Court of Texas County wishes to know if the Court may use money accrued on Refunding and Court House and Jail Bonds by issuing a warrant on the county in order to save the interest on county warrants.

"The sum of \$15,000 is now on hand and will not be needed until the first of the year at which time money will be on hand from the current tax collections.

"Will you please send an opinion on this to the County Court of Texas County, at Houston, Missouri?"

The question is, as we understand it, whether the County Court of Texas County may use the \$15,000 (which it has on hand at the present time in the Courthouse and Jail Bond Fund) to pay the current expenses of the county, and then repay this amount into the Courthouse and Jail Bond Fund the first of next year from the current tax collections.

We assume that the County of Texas has voted Courthouse and Jail Bonds and that the \$15,000 above mentioned was derived from an annual tax levied by the County Court to pay the interest and create a sinking fund for the payment of said obligation under the provisions of Article 5, Chapter 16, R. S. Mo. 1939.

There is a general rule of law which we think is applicable to this question and that is that taxes authorized to be levied and collected for one purpose cannot be diverted or used for some other purpose.

Under the title of "Taxation" in 61 C. J. page 1521, Section 2235, it is stated as follows:

"Taxes which are set apart by the constitution of the state for particular uses cannot be diverted by the legislature to any other purpose, and neither can funds derived from taxes levied and collected for particular purposes be legally utilized for, or diverted to, any other purpose. * * * * *"

This rule of law is supported by cases from various states and we quote from Dew vs. Ashley County, (Ark.) 133 S. W. (2d) 652, 1. c. 653:

"* * * Perhaps there is no better settled principle of law than the one providing that the effect that taxes levied and collected for a particular purpose may not be diverted or appropriated to some other purpose. * * *"

And also, in School District No. 24 vs. Smith, 191 Pac. 506, 1. c. 510, the court stated:

"Although the county court is authorized and directed by the Legislature to make such a levy for school purposes, when made it is for the sole use and benefit of the various school districts of the county. The authority of the county court then ceases. When

the tax is collected it automatically becomes the money of the school districts according to their proportionate rights, and thereafter the county court has no interest whatever in the fund. * * * * *

In the case of State ex rel. Hopper, vs. Cottengin, 172 Mo. 129, l. c. 135, in discussing the question of the county using money voted for a bonded indebtedness for ordinary county purposes, the court said:

"* * * The fund in question was no part of the general revenue fund of the county. It was a special fund raised for a particular purpose, and neither the county court nor the county treasurer had any right to apply a dollar of it to any other purpose. If, on the one hand, the bonds are valid, and the taxes were legally levied, the bondholders are entitled to it. * * * * *"

The same principle is involved as when taxes which are levied for school purposes cannot be used, when collected, for county purposes. Neither can taxes levied for county purposes be used for school purposes. The authority of the County Court ceases with the making of the levy, and the money, when collected, becomes automatically the money of the school districts.

It is clear that the County Court, in the instant case, would not have authority to issue a warrant payable out of the interest and sinking fund and payable into the county revenue, for the ordinary county expenses, and then repay the interest and sinking fund from the current taxes on January 1, 1945, for the reason that the fund cannot be used for any other use than the payment of the bonded indebtedness and interest thereon.

CONCLUSION

It is, therefore, the opinion of this department that the County Court of Texas County would not be authorized to use the

money collected to pay the bonded indebtedness for county purposes, on an agreement to pay same back into the interest and sinking fund at a later date.

Respectfully submitted,

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APPROVED:

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CRM:CP