

**County Commissioners—Transfer of Money from the Bridge Fund to the Poor Fund.**

Money in the Bridge Fund may not be applied to any other purpose or be transferred to any other fund except in the case of a surplus.

Board of County Commissioners of Mineral County,  
Superior, Montana.

Gentlemen:

You have requested my opinion upon the question whether the Board of County Commissioners may transfer money from the Bridge Fund to the Poor Fund.

Section 2 of Sub-Chapter 5 of Chapter 141 of the Laws of 1915, relating to the establishment of the Bridge Fund, reads as follows:

“The Board of County Commissioners may levy a special tax not to exceed two mills on the dollar of the taxable property of the county for the purpose of constructing, maintaining, and repairing free public bridges. Such tax must be levied and collected in the same manner as other taxes, and the money when collected and paid into the county treasury must be kept as a special bridge fund, subject to the order of the Board of County Commissioners, to be used in the construction, maintaining, and repairing of bridges at such places as said Board directs.”

Chapter 160 of the Laws of 1919 reads, in part, as follows:

"The Board of County Commissioners may, in their discretion, for the purpose of constructing roads and bridges, make an increased levy upon the taxable property of the county of ten (10) mills or less; \* \* \*

"Section 2. Before such increased levy shall be made, the question shall be submitted to a vote of the people at some general or special election \* \* \*."

Section 2921 of the Revised Codes of 1907 reads as follows:

"The board is authorized to transfer all surplus moneys that may be on hand in any of the several county funds, except the school fund, to such fund or funds as they may deem for the best interest of the county or to appropriate said surplus moneys to the payment of the outstanding indebtedness of the county, but no moneys belonging to the school fund must be taken therefrom except for school purposes."

While it is true that this office under previous Attorneys General (Vol. 7, p. 183; Vol. 5, p. 452) has given a very liberal construction to Section 2921, *supra*, the actual decision in Volume 5, page 452, was to the effect that funds could be transferred from the General Fund to the Bridge Fund, and not that any money could be taken from the Bridge Fund. The opinion in Volume 7, page 183, holds that money may be transferred from the General Fund to the Poor Fund and that any surplus in the Bridge Fund may be used to pay outstanding registered warrants of the Road Fund. This was at the end of the fiscal year, when it could be ascertained if in fact there was a surplus to be disposed of.

In view of the statutory provisions above quoted from the Session Laws of 1915 and 1919, which are later enactments than Section 2921, it would appear that taxes levied and collected for constructing and maintaining bridges are dedicated to that purpose. By the law of 1919 an additional tax may be levied only by submitting the same to a vote of the people. It is fundamental in connection with the expenditure of public moneys that the proceeds are primarily to be applied to the purposes declared by the people when the matter is submitted to a vote. Under this rule any tax collected under the provisions of Chapter 160 of the Laws of 1919 would unquestionably be dedicated to the purpose of constructing roads and bridges, and the use of same for any other purpose would be a diversion of the fund from the purpose authorized and directed by the people.

To a large extent the same may be said of Section 2 of Sub-Chapter 5 of Chapter 141. The law specifically requires that the tax there authorized shall be used in the "construction, maintaining and repairing of bridges." While, in the absence of specific application of taxes or funds, the general powers with reference to county funds

given by Section 2921 might be held to warrant the appropriation of the Bridge Fund to the support of the poor and the transfer of the same to the Poor Fund, nevertheless the general powers referred to would be insufficient to warrant such application of the fund in the face of the specific application made by Section 2, supra, and Chapter 160 of the Laws of 1919.

Furthermore, provision is specifically made by statute for raising revenues for the support of the poor and for the creation and maintenance of a Poor Fund, and this would lead to the inference that the Legislature intended that the County Commissioners should supply the Poor Fund from these sources. Any other rule would permit the Commissioners to levy taxes for any specified purpose and after collecting them, in the absence of specific prohibition as in the case of school funds in Section 2921, supra, expend them for an entirely different purpose. The result would be that they need levy no poor tax at all, but could merely take so much as required from some other fund and transfer it to the Poor Fund. Carrying this argument to its extreme would, however, render Section 2921 practically a nullity, and it must be construed with the later Acts so as to give it effect if possible, under the rule often enunciated by the Supreme Court that repeals by implication are not favored. From this it follows that Section 2921 must be construed to authorize the transfer of such funds when a surplus is on hand as the Commissioners may deem for the best interests of the county, provided that such surplus funds are not dedicated by law to some specific purpose, which purpose has not been fulfilled or has not ceased to exist.

The powers of the County Commissioners have been further limited by the "Budget Law," which is Chapter 209 of the Laws of 1921, reading in part as follows:

"Section 5. Each and every and all County Officers, institutions and agencies, including Boards of County Commissioners, shall be limited in their expenditures for the fiscal year for which such budget was made, to the amount and in the manner as in such budget, as finally approved, shall be set forth, provided that should any emergency or just cause arise for the allowance of a greater sum or sums for any particular office, officer, institution or agency of the county, and the County Commissioners shall have determined that such is an emergency or just cause for the allowance of the additional amount, they may permit expenditures to be made for such emergency or just cause and include the same in their estimate for tax levy in the succeeding fiscal year.

"Section 6. All budgets or applications for expenditures prepared and filed in accordance with the provisions hereof, shall be public records, and no warrant shall be drawn for any expenditure except those provided for in said budget."

In the case of State ex rel. Commissioners of Silver Bow County v. District Court, 62 Mont. 275, the following language indicates the rights of County Commissioners to transfer funds:

"Heretofore we referred to the ordinary resources of the poor fund. Under certain circumstances moneys may be transferred from any other county fund (except the school fund) to the poor fund, but the all too-prevalent notion that such transfers may be made indiscriminately is erroneous. It is only the surplus in the other funds that may be transferred (sec. 2921, Rev. Codes)."

From this decision and the sections from Chapter 209 above quoted, it is apparent that the County Commissioners may not transfer funds in any case until the end of a fiscal year discloses a surplus in the fund from which a transfer is proposed, or until it has become obvious that there is a surplus over and above the requirements of the purpose for which the taxes were levied and collected.

I am therefore of the opinion that the money in the Bridge Fund was dedicated to bridge purposes, and that while the need for that purpose continues the money may not be applied to any other purpose or be transferred to any other fund.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.