

County Commissioners—Transfer from the General to the Classification Fund—Outstanding Registered Warrants—Effect of.

A transfer from the General Fund to the Classification Fund, when there were outstanding registered warrants against the General Fund in excess of the amount of cash on hand, was unauthorized and illegal.

The transfer having been made illegally, the money should be retransferred to the proper fund.

A. E. Erickson, Esq.,
County Attorney,
Plentywood, Montana.

My dear Mr. Erickson:

Your inquiry, in regard to the right of the County Commissioners to transfer funds from the General Fund to the Classification Fund, has been received.

From your statement it appears that the resolution authorizing the transfer was passed on the 27th day of February, 1920, and that the transfer was made March 31st. The amount transferred was \$7,000, and at the time of the transfer the General Fund contained cash in the sum of \$5,418.46, against which there were outstanding registered warrants in the sum of \$11,023.22.

You also inquire whether the County Treasurer is authorized to re-transfer this amount from the Classification Fund to the General Fund without the authority of the County Commissioners, and whether the County Treasurer may transfer interest on the same for the period that the amount was in the Classification Fund.

On January 27, 1922, in response to an inquiry from Mr. Horace S. Davis, County Attorney of Sweet Grass County, Montana, an opinion was rendered holding that a transfer of funds from the General Fund to the Classification Fund at that time was improper because the classification law contemplated payment of classification expenses from the taxes levied for said fund to the exclusion of payment from other sources. (Brown v. Klemmer, 89 Pac. 325; Potter v. Fowzer, 21 Pac. 118; Morrow v. Pike Co., 88 S. W. 99; State v. Pollard, 136 S. W. 427; Marton v. Hopkins, 41 Pac. 906.) This opinion also referred to the effect of the Budget Law upon transfers of fund, but at the dates referred to by you the Budget Law of 1921 was not yet in effect, its effective date being July 1, 1921.

In State ex rel. County Commissioners of Silver Bow County v. The District Court, 62 Mont. 275, the Supreme Court used the following language:

“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.)"

Section 2921 referred to is now Section 4631 of the Revised Codes of 1921, which 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."

From this statute and the foregoing decision it is plain that transfers are authorized only as to a surplus in any fund in any event, and from your statement there was no surplus in the General Fund at the time of the transfer. In the case cited, the court, in referring to the effect of the registration of warrants against a fund, used the following language:

"The warrants registered prior to July 1 were a direct charge upon the entire poor fund. They had been issued and registered under the statutes then in force and it would not have been competent for the legislature to give preference to other claims over them. (*People v. Austin*, 11 Colo. 134, 17 Pac. 485; *Rollins v. Board*, 199 Fed. 71; *Dillon on Municipal Corporations* (5th ed.), sec. 859; 15 C. J. 606.)"

From this it appears that the holder of registered warrants against a fund has rights against the same in the nature of contractual rights, and that while such warrants are outstanding in excess of the amount in such fund the County Commissioners would be violating the rights of such warrant holders by transferring the funds charged with such registered warrants so as to prevent the payment of the warrants. And in the face of outstanding registered warrants in excess of the amount of cash in the fund, there could be no surplus for transfer under the above statutory provision and decision of the court.

It is therefore my opinion that the transfer from the General Fund to the Classification Fund under the facts submitted was unauthorized and illegal.

As to your second question, the money being improperly and illegally in the Classification Fund, it should have been retransferred to the proper fund, and while there is no statute specifically authorizing transfers by the Treasurer, he is violating no law by doing that which ought to have been done, and the \$7,000, after retransfer, is where it belongs according to law. As to any interest actually earned by this fund by virtue of its deposit in depository banks, this should follow the fund and be paid into the General Fund. However, unless such

interest was actually earned no transfer on account of interest should be made, inasmuch as one fund is not chargeable with interest as in favor of another.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.