

**Opinion No. 48**

**Airports, Levy for Establishment and Maintenance — County Budget System—Surplus Monies, Disposition of—**

**Held:** 1. When the County Commissioners authorize a levy for airport purposes and the budget appropriation for capital outlay for

**such airport purposes is unexpended at the end of the fiscal year for which it was appropriated, such surplus may be carried over and expended in the following year for the original purpose for which it was appropriated.**

August 29, 1949.

Robert E. Purcell, County Attorney  
Garfield County  
Jordan, Montana

Dear Mr. Purcell:

You have requested an opinion from this office upon the following facts:

"Garfield County is the owner of an airport on the outskirts of the town of Jordan. A separate budget is prepared each year for salaries and wages, maintenance and improvements and capital outlay, and a levy of  $\frac{1}{2}$  mill has been made each year for these purposes. Last year the budget for capital outlay was \$2,400.00 which was not expended. At the end of June 30th, 1949, there had been accumulated in the airport fund the sum of \$3,160.48. Can these funds be used during the present fiscal year for the purpose of constructing an additional hangar at the airport, and a levy of  $\frac{1}{2}$  mill be made for salaries and wages, maintenance and improvements, etc.? If it cannot be used what becomes of the sum of \$3,160.48?"

The statutory authorization for establishment and maintenance of airports by counties is contained in Sections 5668.35 through 5668.40, Revised Codes of Montana, 1935, as amended by Chapter 54, Laws of 1941 and Chapter 54, Laws of 1945. Chapter 288, Laws of 1947, contains further provision with regard to city and county airports and was enacted to enable such political subdivisions to accept federal funds for airport purposes.

Section 5668.38, *supra*, as amended, provides that for the purpose of establishing, constructing, equipping, maintaining and operating airports and landing fields the county commissioners may each year assess and levy in addition to the annual levy for general administrative purposes, a tax of not to exceed two mills on the dollar of taxable value of the property of said County.

Your question of whether the unexpended balance left in a fund at the end of a fiscal year can be carried forward and used for the purposes for which such funds were originally budgeted must be answered in the light of the provisions of the County Budget System which are set forth in Sections 4613.1 through 4613.10, Revised Codes of Montana, 1935, as amended.

While providing in detail for the setting up of the budget, and procedure to be followed in setting up appropriations and expenditures, the

above-mentioned budget sections are silent as to the disposition of monies which remain in the different funds at the end of the fiscal year. In connection with the State Budget, Section 304, Revised Codes of Montana, 1935, provides that unexpended appropriations shall after the expiration of the time for which appropriated be covered back into the several funds from which originally appropriated. However there is no similar provision in the county budget act.

Section 4631, Revised Codes of Montana, 1935, does provide that the board of county commissioners 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. In speaking of this section the then Attorney General in Opinion Number 234, Volume 18, Report and Official Opinions of Attorney General ruled that the transfers provided for by Section 4631, *supra*, could not be made until the end of the fiscal year had arrived.

To hold that unexpended monies in various special County funds revert to the general fund at the end of the fiscal year would be entirely inconsistent with the operation of Section 4631, *supra*, as outlined in the preceding paragraph. Certainly funds would not be available for transfer purposes if they were to revert to the general fund at the end of the fiscal year.

In view of the fact that I can find no mandatory provision in the statutes directing that unexpended monies in special funds revert to the county general fund at the end of the fiscal year and also for the reason that it would seem to be the best policy to expend monies raised by tax levies for the purposes for which the levies were made, it is my conclusion that the unexpended balance in the airport fund may be carried from one fiscal year to another and that the budget for 1949-1950 may include the unexpended balance from the 1948-1949 budget and may also provide for the expenditure of the amount of money that can be raised by a tax levy of two mills if such levy be deemed necessary by the county commissioners.

In ruling upon a somewhat similar question the then Attorney General in Opinion Number 143, Volume 21, Reports and Official Opinions of Attorney General held as follows:

"The surplus in any item in the current budget is carried over to the same item in the budget for the next fiscal year. A surplus in the general fund is available for the use of the general fund of the next ensuing year. Section 4613.2 Revised Codes of Montana, 1935, provides the County Clerk shall prepare a tabulation of the expenditures and the receipts from all sources and 'the surplus of unencumbered treasury balances at the close of the fiscal year.' The use of the word 'balance' indicates that each surplus is carried over to the identical fund. Our Court in *Rogge v. Petroleum County*, *supra*, recognized this by the statement:

"That the board of County Commissioners in preparing its budget and making its levy must take into consideration the amount of money already **available in each fund** for which a levy is made, is made plain by sections 4613.1, 4613.2 and 4613.5.' (Emphasis mine.)"

It is therefore my opinion that the monies in the airport fund which were unexpended in the last fiscal year may be provided for in the present budget and expended in the future for airport purposes.

Very truly yours,  
ARNOLD H. OLSEN,  
Attorney General.