

**Sinking Fund—Poor Fund—Road Fund—General Fund—Transfer of Funds.**

It is the duty of the county commissioners annually to levy a tax sufficient to pay the interest of all bonds and to create a sinking fund. This provision is mandatory. If the board vio-

lates this provision and does not provide for a sinking fund, the interest on bonds may be paid out of the surplus money on hand in any of the other county funds, except the school fund, provided there is a surplus in any such funds at the end of the fiscal year. The commissioners, under Division 5 of Section 4230, may levy, in addition to the per capita tax of \$2.00, a special tax for the poor fund of the county. If this fund proves insufficient for the care and maintenance of the poor, the commissioners have no authority to transfer money from other funds to this fund until the close of the fiscal year, when they may do so out of any surplus in the funds, other than the school fund. When a fund is exhausted prior to the close of the fiscal year, warrants drawn against it must be registered, as provided in Section 4290, Political Code. Section 4256 provides for the transfer of all surplus money that may be on hand in the several funds, except the school fund. All taxes levied for the different special purposes mentioned in the law must be used exclusively for such purposes, until the close of the fiscal year, at which time, if there is a surplus in any such funds, other than the school fund, it may be transferred under the provisions of Section 4256.

The word "poor", as used in Section 4569, Political Code, means the persons entitled to relief from the county, as defined in Section 3201, of the same code.

Helena, Montana, Oct. 31, 1905.

Hon. T. E. Collins, State Examiner, Helena, Montana.

Dear Sir:—Your request for an opinion upon the following questions received:

"1. Where there is no Sinking Fund created to pay interest on Bonds is there authority to pay same out of County Fund?"

"2. Where a County levies no property tax for the Poor Fund is there any authority to defray Poor Fund expenses out of the County Fund?"

"3. Does Section 4256 authorize the transfer of Road or Poor Funds to County Funds or County Funds to Road or Poor Funds? Doesn't Section 4256 contemplate the transfer of county funds only and not Road or Poor Funds?"

"4. Under the Poor Law, page 416 Political Code, it appears a person is not a County charge because he is poor; he must be sick or unable to work, to be entitled to the County aid and then only at the Poor House, if there is one. Under Section 4569 the Auditor is authorized to examine all claims for charity under the direction of the Board of County Commissioners. Do these Sections authorize the Auditor and Commissioners to rent houses and furnish widows and children with fuel and provisions?"

These questions will be answered in their regular order.

1. Under section 4247, Political Code, it is made the plain duty of the board of county commissioners annually, at the time of levying taxes, to levy, in addition to all other taxes, a sum sufficient to pay the interest on all bonds issued by the county and to create a sinking fund for the payment of the bonds when due. The taxes received under this levy is to be set apart in a fund to be known as the "bond fund." This provision is mandatory and should be strictly observed by the boards of county commissioners. However, where a board of county commissioners violates its duty in this respect and makes no provision for the payment of interest on bonds by special levy, it must be presumed that the board, in estimating the current expenses of the county, included the interest upon outstanding bonds, which is a fixed charge, and provided for the payment of the same in making their levy for general county purposes, under division 13, section 4230.

We are, therefore, of opinion that the interest upon outstanding bonds should be paid out of the surplus in the county fund, (Sec. 4230, Pol. Code.) or, as authorized by section 4256, Pol. Code, from the surplus moneys that may be on hand in any of the other county funds, except the school fund, where the county commissioners have violated their plain duty by failing to make a levy for the bond fund. However, until the end of the year, none of such funds are available for that purpose or for any purpose other than that for which they are specially created, for until then the amount of available "surplus," if any, can not be ascertained.

2. Division 5, of section 4230, provides that in addition to the per capita tax of two dollars, the commissioners may levy a tax on property, not exceeding one-fifth of one per cent., the taxes received from this levy to be placed to the credit of the poor fund of the county. It is the duty of the county commissioners at the time of levying taxes to make an estimate of the expenses for the care and maintenance of indigent, sick and otherwise dependent poor of the county, and if, in their opinion, the per capita tax will not be sufficient to meet such expenses they should make a levy on the taxable property, as provided in said division 5 of section 4230. If the fund thus provided for by the county commissioners proves to be insufficient to pay the expenses for the care and maintenance of the sick and poor of the county for the fiscal year, the commissioners have no authority, prior to the close of the fiscal year, to transfer any moneys from the county fund, or any other fund, to the poor fund for the purpose of providing for the deficiency. Such transfers can only be made at the close of the fiscal year from some fund, other than the school fund, in which there is found to be a surplus, as provided in section 4256, Political Code.

Section 4290, Political Code, provides that warrants shall be drawn by order of the board of county commissioners for the current expenses during the year "and must be paid in the order of presentation to the treasurer. If the fund is insufficient to pay any warrant, it must be registered and thereafter paid in the order of its registration." The poor fund provided for by division 5 of section 4230 is a special fund created for a special purpose, and whenever this fund is exhausted during any

fiscal year warrants drawn against the same must be registered and paid as provided in section 4290.

The county fund provided for by division 13 of section 4230 is a special fund created to defray the current expenses of the county, including salaries otherwise unprovided for. But the current expenses to be paid out of the county fund do not include expenses that are to be paid out of special funds for special purposes, for which separate and distinct levy is provided for by law.

3. Section 4256 authorizes the transfer of 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 the board may deem for the best interests of the county, or to appropriate said surplus to the payment of outstanding indebtedness.

Subdivision 4 of section 4230 authorizes the commissioners to levy a tax for the purpose of laying out, maintaining, controlling, managing public highways, bridges and ferries. The money from this tax goes into what is known as the "road fund," and is a special levy for a special purpose. As stated above, subdivision 5 of said section provides for the levying of a tax for the poor fund, which is a special fund for a special purpose.

Section 3982, Political Code, provides that that part of the poor fund derived from poll taxes must be paid to the county treasurer for the exclusive use of the poor fund of the county. Division 13 of section 4230 provides for a levy for county purposes to defray the current expenses, including salaries otherwise unprovided for. As stated above, this is a special fund for a special purpose, and cannot be used for paying expenses incurred which the law provides shall be paid out of other special funds raised by a special tax for that purpose, except as authorized by law.

Section 4257 provides that a sum not less than one nor more than twenty-five per cent of the county fund shall be set aside and known as the "contingent fund" to defray incidental expenses of the county. Upon making the annual levy of taxes, it is the duty of county commissioners to estimate, as near as possible, the expenses for the fiscal year that will be incurred against the respective funds mentioned above. Until the close of the fiscal year these funds should be held sacred for the payment of expenses incurred and legally chargeable against the special fund created for the purpose of paying such expenses. Until the close of the fiscal year there is no means of telling just what the expenses against any special fund will be, and therefore there is no way of determining whether there is a surplus in any of such funds until the close of the fiscal year and the county treasurer has made his annual settlement with the county clerk, as provided in division 4 of section 4350. If, upon such settlement, the board of county commissioners find that there is a balance on hand in any of the special funds, except the school fund, after providing for all outstanding warrants issued against such special fund, then, under the provisions of section 4256, the board has the right to transfer the surplus moneys so found to be on hand in the several county funds, except the school fund, to such other fund or funds

as the board may deem for the best interests of the county. Thus, if in any one fund there was a surplus at the end of the fiscal year, and in any other fund the money had been exhausted and warrants presented were registered, they could transfer the surplus to the fund against which warrants were registered, whereupon the treasurer could call in and pay such registered warrants.

In our opinion there is no question but what the surplus moneys referred to in section 4256 means the money on hand at the close of the fiscal year, after paying all warrants issued against the respective funds. This construction is sustained by the language of section 4258, which says "if a surplus remains in the contingent fund at the end of the year, such surplus must be transferred to the general fund." It is the plain intention of the legislature that the various funds provided by law should be used exclusively for the purposes designated in establishing such funds and that they should not be transferred or in any manner diverted from the special purposes for which the special tax was levied until the close of the fiscal year. If such was not the intention of the law there would have been no occasion for providing for several different funds. The county commissioners could have been authorized to have made one general levy of so many mills upon the taxable property of the county and then drawn all warrants against such general fund. But the legislature has seen fit to provide separate funds to be used for specific purposes, and by division 3 of section 4350 has specifically stated that the county treasurer must so keep his books as to show the amount received and paid out on account of the separate funds. Nowhere does the law authorize the transfer of the money in one fund to that of another, except the surplus mentioned in said section 4256. This surplus can only be determined at the close of the fiscal year.

Under section 4290 it is provided that "if a fund is insufficient to pay any warrant it must be registered and thereafter paid in the order of its registration." From this language there can be no question but what the warrants issued against a certain fund must be paid out of that fund or registered against such fund, and that the legislature did not intend that money belonging to any other special fund should be transferred to the fund against which such warrant was issued, except at the close of the fiscal year when it was ascertained that there was a surplus in any fund.

4. The only persons who are entitled to receive relief from the county are those who are without means and unable to earn a livelihood in consequence of bodily infirmity, idiocy, lunacy, or other cause, and have no father, grandfather, mother, grandmother, children, grand children or sisters of sufficient ability to care for them. (See sections 3201 and 3203 Political Code.) Under section 4569, Political Code, the county auditor is made county superintendent of the poor. The word "poor," as used in this section, means persons entitled to relief from the county, as defined in said section 3201, Political Code. The "claims that may be made upon a county for charity" simply means the claims of persons entitled to relief from the county, as defined in said sections 3201 and 3203. If the county has a poor farm, all persons who are a county

charge should be provided for at such poor farm, provided it is of sufficient capacity for that purpose, and, provided, further, that the commissioners have made provision at such poor farm for the support and maintenance of the sick, poor and infirm.

As to the renting of houses and furnishing of fuel and provisions to widows and children, the county auditor and commissioners have no authority to do this, provided the widow is able to work or the children are old enough to earn a livelihood. However, there must be some discretion given the board of county commissioners in matters of this kind. If there is a widow with children residing within the county who has no work and is unable to procure work, and has no means with which to provide the necessaries of life for herself and children, it would certainly become the duty of the county commissioners, under division 5 of section 4230, to provide for such "dependent poor of the county" until such time as they could procure work and provide for themselves.

Respectfully submitted,

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Attorney General.