

**County Commissioners, Authority to Transfer Money Improperly Credited to the School Fund. Funds, Improperly Credited, Transfer of.**

Where funds have been received and credited to the school fund, and such school fund has been apportioned by the superintendent, the commissioners have no authority to transfer any part of such funds to the general fund.

Helena, Montana, March 16, 1909.

Hon. J. C. Huntoon, County Attorney, Lewistown, Montana.

Dear Sir:

I am in receipt of your letter of March 11, in which you request an opinion upon the following proposition:

For some time past fines which have been collected in this county have been paid to the County Treasurer without deducting the cost of prosecution, as required by Section 9715 of the Revised Codes, and, therefore, all such money has been placed by the County Treasurer to the credit of the common schools, pursuant to Section 994, except in the cases where it is otherwise provided by law. You state that the school fund of the county has a large amount to its credit while the general fund and contingent fund are low. The question submitted is whether the County Commissioners have authority by resolution to transfer the amount thus improperly paid into the school fund to the general fund, and would such a resolution be ample protection to the County Treasurer to so transfer it.

This statement of facts does not show how long this method of handling funds has been followed. Section 830, Revised Codes, provides for the apportionment of the school fund to the various districts of the county, at least quarterly. After the apportionment of school funds to the various districts of the county, such money becomes subject to the control of the County Commissioners. Where fines, including cost of prosecution, have been apportioned to the school districts, and expended by the trustees of such districts, such money is beyond recall at this time, and it is apparent that the length of the school terms in the various school districts in the past were based largely upon the amount of these apportionments, the trustees relying upon the general four mill levy provided for by Section 994 and the apportionment of state funds for carrying on the schools in the future, supplemented, of course, by such special levies as the trustees of each district may find it necessary to make under Section 995. Therefore, if the Board of County Commissioners at this time should attempt to transfer from the common school fund an amount equivalent to the cost of prosecution heretofore credited to the school fund by the County Treasurer, and expended by the trustees, it would materially impair the common school fund provided for in Section 994 and 993, and thus seriously affect the management of the schools during the present year.

Therefore, in our opinion the only cost of prosecution credited to the school fund which could be transferred by the County Commissioners to the general fund would be such amounts as have not yet been apportioned to the various school districts; in other words, the commissioners have no authority to transfer any of the money received from the state or from the general school levy made by the County Commissioners to any other fund, nor to reimburse such fund for money heretofore erroneously credited to the school fund, but which has been apportioned to school districts.

Section 2921, Revised Codes, expressly prohibits the County Commissioners from transferring moneys belonging to the school funds; and, in our opinion, the fact that certain moneys in the past have been improperly credited to the school fund would not give the commissioners authority at this time to transfer any regular school funds to any other fund, except such amounts as are erroneously paid to the treasurer and are still in his hands to the credit of the general school fund of the county.

Very truly yours,

ALBERT J. GALEN,

Attorney General.