

School Fund—Disposition of Gambling Fines—Transfer of Funds.

All gambling fines, after deduction of cost of prosecution, should be turned over to County Treasurer to be credited to common school fund. It is the duty of the County Commissioners to transfer to school fund all moneys which should have been credited thereto.

February 9, 1917.

Hon. Geo. A. Judson,
County Attorney,
Great Falls, Montana.

Dear Sir:

I have your letter of January 19th, and copy of letter from the County Superintendent of Schools to the Board of County Commissioners in connection with the transfer to the school fund from the

contingent fund of the amount of fines which have been imposed in the district court and turned over to the county treasurer and not credited to the school fund.

I agree with the several conclusions at which you have arrived in connection with this matter. Section 9715 of the Penal Code provides that all fines and forfeitures collected in any court, except police courts, must be applied to the payment of the costs of the case in which the fine is imposed or the forfeiture incurred; and after such costs are paid, the residue must be paid to the county treasurer of the county in which the court is held.

Section 2001 of the School Law, Chapter 76, 1913 Session Laws, provides that there shall be set apart by the county treasurer, for the support of common schools, all moneys paid into the county treasury arising from all fines or violations of law, unless otherwise specified by law. And the same provision is contained in Section 994 of the Political Code which was in force up to the time of the passage and approval of the present school law in 1913.

Section 2012 of the School Law, makes it the duty of the clerk of the district court, at the close of every term, to report to the county superintendent the amount of all fines imposed by the district court during such term. In view of the foregoing I am of the opinion that all fines collected for violation of the gambling laws, after deducting the costs in each case, should be turned over to the county treasurer to be by him credited to the common school fund.

By the provisions of Section 2921 of the Political Code, the Board of County Commissioners have authority to transfer surplus moneys from one fund to another, as they may deem for the best interests of the county, with the exception of the school fund, and any moneys belonging to the school fund cannot be taken therefrom except for school purposes.

Section 2004 of the School Law provides that county school moneys can be used for the various purposes as authorized and provided in the Act, and for no other purpose.

In view of the foregoing, I am of the opinion that, not only do the County Commissioners have authority, but that it is their duty to transfer to the common school fund all moneys which should have been credited to the school fund in the first instance.

I do not have before me a copy of the form now being used by the several clerks of the district courts in transferring moneys to the county treasurer. Section 2001 of the School Law provides that all moneys arising from fines or violation of law, shall be forthwith paid into the county treasury by the officer receiving the same. In view of this provision, and of the other provisions above cited, I am of the opinion that the clerk of the district court, in transmitting to the county treasurer, should specifically designate the amount thereof which represents the net residue from the fines or violations of law, after deducting the costs in each case, which amount is to be credited by the county treasurer to the county school fund.

Respectfully,

S. C. FORD,
Attorney General.