

**Budget Law—Counties—County Commissioners—Funds
—Licenses—Roads—Taxes.**

The budget law was intended to prohibit expenditures, except those provided for, except in case of emergencies.

Of those county funds subject to transfer from one to another it is only the surplus that may be transferred.

F. A. Ewald, Esq.,
County Attorney,
Great Falls, Montana.

My dear Mr. Ewald:

Your letter was received in which you state that the State Examiner, in his examination of the county affairs of Cascade county, criticized expenditures made by the County Commissioners in connection with your road fund in excess of the amount as fixed by the county budget for road fund purposes. You state that, while the amount expended was in excess of the amount fixed by the budget, it was not in excess of the amount received to the credit of the road fund under the levy, plus the amount received from the county's share of automobile license tax; that is, that the levy which was made to provide for the amount required to satisfy the budget, as fixed, was

supplied by the levy, while the amount received from the county's share of automobile license tax increased the amount in the road fund beyond what was called for in the budget, and that this amount was expended.

The Act which requires the county to provide by budget for its various expenditures does not cover specifically the question you have asked, that is, it contains no provision prohibiting specifically an expenditure of this kind. The purpose of the Budget Act, however, was to require each department and agency of the county to estimate in advance the expenditures necessary to carry that department through the year and to prohibit warrants being issued in excess of the amount as called for in the budget, except in case of emergency or just cause. While it is possible that in this particular case the County Commissioners may have been misled as to their right to expend all of the money coming into a certain fund, whether provided for in their estimate or not, it is my opinion that the spirit of the Act was to prohibit any expenditure, except that provided for by the budget, and that the county can legally expend only the amount provided in this manner except to cover cases of emergencies.

You have also submitted the question as to whether money may be transferred from the general fund to the Federal Aid Project fund. The Federal Aid Project fund is not one of the funds provided for by statute. The County Commissioners, no doubt, established this fund for the purpose of keeping account of expenditures in connection with Federal Aid projects, that is, if bonds were sold for highway construction in connection with Federal Aid, a fund of this kind was created and the proceeds of the bonds placed in this fund so as to keep them separate from the general and road funds.

In speaking of the right to transfer money from one county fund to another, Mr. Justice Holloway in *State vs. District Court*, 62 Mont. 275, said:

"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, Revised Codes) * * *."

As to whether there is a surplus in the general fund would depend upon the facts. A surplus could not be said to exist while there were outstanding warrants against it which would consume it if paid. To allow a transfer in such a case would defeat the right to have a warrant paid in the order of its registration, which would, as intimated by Mr. Justice Holloway in the above case, impair the obligation of a contract. It would seem that no fund could be said to contain a surplus until the end of the year when it had satisfied all obligations drawn against it, or in case no further expenditures from the fund were contemplated during the remainder of the year, which

might occur in the case of a road fund, but is not likely to occur in the case of the general fund, which must satisfy all obligations not drawn against a particular fund.

Subject to the foregoing, it is my opinion that such transfer may be made.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.