

Opinion No. 215.**Counties—Highways—Bridges—
Budget—Transfers—Road Fund
—Bridge Fund.**

HELD: The budget act does not authorize a transfer of moneys from a road fund to a bridge fund. (Not applicable to Section 4631, relating to transfers of surplus moneys.)

December 26, 1935.

Mr. W. M. Black
Cow
Shelby, Montana

On your visit here a few days ago

you informed me substantially that the bridge formerly known as the Johnson Bridge, crossing the Marias River south of Shelby, has been replaced by a new bridge and has been dismantled; that the county commissioners may desire to move the old bridge to a new location and that there is no appropriation for the purpose in the bridge fund of the county although the road fund has money in it which could be spared to do the work. We discussed the provisions of the first paragraph of Section 5 of Chapter 148, Session Laws of 1929, and also the provisions of Section 6 of said chapter. An opinion rendered by Attorney General Foot (Volume 14, Opinions of the Attorney General, pp. 310 and 311) contains a statement to the effect that Section 5 above mentioned authorizes a transfer of an appropriation from one fund to another in certain cases.

The proviso in question reads as follows: "Transfers between the general classes provided in Section 2 hereof shall not be permitted, provided and except that in the case of appropriations to be expended from county road or bridge funds, special road district funds, or any special highway fund, any transfer between or among the general classes of (1) salaries and wages, (2) maintenance and support, and (3) capital outlay, may be made."

You will note that the quoted provision purports to authorize, in the case of county road or bridge funds, transfers between or among certain classes, rather than between or among funds. In our opinion, the language cannot reasonably be construed to mean that a transfer of moneys from a road fund to a bridge fund is allowable under this section, and to that extent we are constrained to disagree with the above mentioned statement contained in Attorney General Foot's opinion. We do not here refer to questions of transfer of surplus moneys in accordance with Section 4631, R. C. M. 1921 (see Volume 13, Opinions of Attorney General, page 257.)

In our discussion, you also mentioned circumstances which might justify the county commissioners in finding that an emergency exists and

taking action under Section 6 of Chapter 148. This question of fact is determinable by the Board of County Commissioners and for your information upon the subject I enclose a copy of an opinion given to the Board of County Commissioners of Valley County on September 14, 1934. (Opinion No. 612, Vol. 15.)