

**Opinion No. 234.**

**Counties—Funds—Transfer—Surplus  
Fund—Budget Law—  
Section 4631.**

HELD: A transfer from the poor fund or the general fund to the road fund is prohibited by budget act (Section 4613.5).

At the end of the fiscal year transfer of surplus funds is permitted and such funds could be used to pay warrants and interest thereon issued in case of an emergency which might be declared as provided by Section 4613.6.

May 16, 1940.

Hon. P. M. Campbell  
Chairman, Board County Commis-  
sioners  
Stanford, Montana

Dear Mr. Campbell:

You have submitted the question whether or not funds may be transferred from the poor fund or from the general fund to the road fund to be used in the repair and maintenance of roads until the next fiscal year.

Section 4613.5, R. C. M., 1935, which is a part of the county budget law, expressly prohibits transfers except in the case of county road or bridge funds, special road district funds, or any special highway funds. Transfers may be made between items such as (1) salaries and wages; (2) maintenance and support; and (3) capital outlay.

Section 4631 authorizes the board of county commissioners "to transfer 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 they may deem for the best interest of the county, \* \* \*." There cannot be any surplus, however, until the end of the fiscal year as one cannot be certain of that fact until that time.

I would suggest this procedure, however: Declare an emergency under the provisions of Section 4613.6, R. C. M., 1935. This requires only one publication in the official newspaper. The hearing must not be less than one week from the date of publication, then five days must elapse following the order. In twelve days, therefore, you could provide authority to expend money for roads in excess of the fund provided by your budget. Having such authority you could register your warrants and at the end of the fiscal year you can transfer any surplus fund which you may have in the poor fund or in any other fund, except the school fund, for the purpose of paying such registered warrants and interest. It seems to me this is the only solution to your problem and it is one which is not impracticable because it can be done in twelve days rather than thirty, which you had in mind.

I have talked with one of the deputy state examiners and they will approve this procedure.