

Opinion No. 195.

Cities and Towns—General Fund—  
Water System.

**Held:** A surplus in the general funds of a municipality cannot be transferred to the water system account to be used in the purchase of a water system.

August 19, 1946.

Mr. Walter T. Murphy  
County Attorney  
Mineral County  
Superior Montana

Dear Mr. Murphy:

You have requested my opinion concerning the following:

The Town of Alberton contemplates the purchase of a water system by the issuance of revenue bonds. There is a surplus in the general fund and you ask if this surplus may be transferred to the water system account and used to assist in the purchase of the water system.

Section 5083.4, Revised Codes of Montana, 1935, which is one section of the Municipal Budget Law, provides for the tabulation of the expenditure

program "for each office, department, service, or institution for the current fiscal year." The section also provides that in the preparation of the budget any surplus or unencumbered treasury balance shall be shown with the result such surplus from a previous year shall be available to reduce the amount to be raised by taxation for the current year. As a new budget has just been prepared it appears there should not be a surplus.

Section 5083.7, Revised Codes of Montana, 1935, permits transfers within the budget in certain instances, but there is no provision for a transfer from the general fund to the water system account.

In your letter you call attention to Section 5 of Chapter 126, Laws of 1939, which provides in part:

"Any resolution or resolutions authorizing the issuance of bonds under this act may contain covenants as to . . .

"(c) The transfer from the general funds of the municipality to the account or accounts of the undertaking, an amount equal to the cost of furnishing such municipality or any of its departments, boards or agencies with the service, facilities and/or commodities of said undertaking . . ."

The above quoted does not permit any transfer from the general funds for the purchase of the water system, but it does authorize such transfer, after the system is created, in payment for the water furnished.

It is therefore my opinion a surplus in the general funds of a municipality cannot be transferred to the water system account to be used in the purchase of a water system.

Sincerely yours,  
R. V. BOTTOMLY,  
Attorney General