

fied electors of your county approved the expenditure "from cash on hand the sum of \$28,000.00 for the purpose of construction an addition" to the county hospital. You also state that the money in question was transferred from the General Fund to a Hospital Building Fund.

The fact that the money was transferred from the general fund is a material point for the reason that transfers may be made only as provided by statute.

Section 4613.5, Revised Codes of Montana, 1935, provides in part:

"Provided that upon a resolution adopted by the board of commissioners at a regular or special meeting, and entered upon its minutes, transfers or revisions within the general class of salaries and wages and of maintenance and support may be made, provided, that no salary shall be increased above the amount appropriated therefore."

The transfers permitted by the above section do not include transfers from the general fund to the poor fund and in particular to the capital outlay account of the poor fund.

The fact that the electors of the county approved the expenditure of the money does not alter the provisions of the budget act nor does it grant any greater authority to the commissioners in regard to these funds.

It is also to be noted that the \$28,000.00 was a surplus, and not necessary for the expenses of the general fund of the fiscal year 1944. This surplus should have been carried over to the general fund for the next ensuing year as cash on hand with resulting benefit to the taxpayers. Opinion No. 143, Volume 21, and Opinion No. 30, Volume 21, Report and Official Opinions of the Attorney General.

The approval of the electorate for incurring of a liability in excess of \$10,000.00 as provided in Section 5, Article XIII of the Montana Constitution is not necessary for the expenditure of surplus funds in view of recent case by our Supreme Court, *Graham v. Board of Examiners*, 155 Pac. (2d) 956, wherein it was held

Opinion No. 95

County Commissioners, Authority of —Funds, Transfer of—Hospital Building Fund—General Fund—Budget.

Held: Funds transferred to a hospital building fund from the general fund, even though approved by the qualified voters of the county, should be returned to the general fund.

January 7, 1948

Mr. M. S. Danklefsen, Chairman
Board of County Commissioners
Garfield County
Jordan, Montana

Dear Mr. Danklefsen:

You have requested my opinion concerning the use of \$28,000.00 which the county has on hand for the construction of a county hospital. You advise me that at a special election held on November 7, 1944, the quali-

that a debt or liability is not created from the appropriation of surplus funds.

As the election does not alter the budget law the funds in question should be transferred back again to the general fund by resolution of the board of county commissioners and in all probability be available as a surplus in the next fiscal year.

While the budget act authorizes expenditures for capital outlay, Section 4613.2, Revised Codes of Montana, 1935, in one fiscal year, the construction of a county hospital would, in most cases, constitute a big burden on the taxpayers in that year. The financing of public buildings under our statutes is customarily done by means of bond issues which spreads the burden over several years with resulting equalization of the tax burden.

It is, therefore, my opinion that funds transferred to a hospital building fund from the general fund, even though approved by the qualified voters of the county, should be returned to the general fund.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General