

Opinion No. 14

BUDGET ACT; Transfer of funds prohibited—BUDGETS; County Budget Act, Transfer of funds prohibited—BUDGETS; Transfers not allowed—COUNTIES; Budgets; Funds, transfer of forbidden — COUNTIES; Funds; Road fund, may not transfer to bridge fund—COUNTIES; Funds; Transfers, surplus moneys—Sections 16-1902, 16-1904, 16-1906, and 16-2048, Revised Codes of Montana, 1947.

- Held:**
1. That a transfer of money may not be made from the road fund to the bridge fund.
 2. That the Board of County Commissioners is not authorized to transfer any surplus money from one county fund to another county fund during the fiscal year, and such so-called surplus monies must be used to reduce the tax for such fund in the next ensuing budget.

May 29, 1961

Mr. Albert Leuthold
State Examiner
Capitol Building
Helena, Montana

Dear Mr. Leuthold:

You have requested my opinion concerning what transfers of monies may be made under the county budget system. You ask in particular whether transfers of funds may be made between the road and bridge funds.

In answering your questions, it is necessary to consider the provisions of Section 16-1902, RCM, 1947, which directs the county clerk,

in preparing the preliminary budget, to prepare a tabulation showing the complete expenditure program of the county for the fiscal year.

This statute provides in part as follows:

“. . . Such tabulation shall set forth the estimated receipts from all sources other than taxation for each office, department, service, or institution for the current fiscal year, the actual receipts for the last completed fiscal year, the surplus or unencumbered treasury balances at the close of such last fiscal year, and the amount necessary to be raised by taxation; the estimated expenditure for each office, department, service or institution for the current fiscal year, the actual expenditures for the last completed fiscal year, and all contracts or other obligations which will affect the current year revenues.”

The above quoted statute contemplates that each office, department, service, or institution shall be separately listed. This statute directs that appropriations and expenditures shall be classified “under the general classes of (1) salaries and wages; (2) maintenance and operation; (3) capital outlay; (4) interest and debt redemption; (5) miscellaneous; and (6) expenditures proposed to be made from bond issues.”

Transfers among appropriations are considered in Section 16-1906, RCM, 1947, where it is provided:

“Transfers between the general classes provided in Section 16-1902 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.”

This statute authorizes transfers between the **classes** enumerated in the road or bridge **funds**. That there is a distinction between classes and funds as used in our Budget Act is apparent as throughout the chapter containing the County Budget System, such a distinction is made. For example, in Section 16-1904, RCM, 1947, which requires the county commissioners to adopt a final budget, it is stated:

“The budget as finally determined in addition to setting out separately each item of which any appropriation or expenditure is authorized and the fund out of which the same is to be paid, shall set out the total amount appropriated and authorized to be expended from each fund, the cash balance in the fund at the close of the last preceding fiscal year. . . .”

From the use of the words “classes” and “funds” in the above cited statutes, it must be concluded that transfers may not be made between funds, but may be made between classes within a fund.

A similar conclusion was reached in Opinion No. 215. Volume 16, Report and Official Opinions of the Attorney General which concluded that a transfer of monies could not be made from the road fund to the bridge fund. This opinion overruled in part an opinion found on Page 310, Volume 14, Report and Official Opinions of the Attorney General.

However, I do not agree with what was said in the opinion in Volume 16 concerning the transfer of surplus monies under what is now Section 16-2048, RCM, 1947, nor the conclusion reached in Volume 13, Page 257, Report and Official Opinions of the Attorney General, authorizing the transfer of surplus funds. Nor do I agree with opinion No. 16, Volume 19, Report and Official Opinions of the Attorney General, which held that surplus monies in the poor or bridge funds of the county could be transferred to the county road fund at the end of the fiscal year. For the following reasons, the opinions above cited, insofar as they authorize a transfer of surplus monies from one fund to another, are hereby overruled.

Section 16-2048, RCM, 1947, was first enacted in 1879, and has continued in the Codes without amendment since such date. The County Budget System was made the law by Chapter 148, Laws of 1929 and as a consequence, because it is later in time, repeals prior statutes including Section 16-2048, RCM, 1947, insofar as they are incompatible (State ex rel. Nagle v. Leader Co., 97 Mont. 586, 37 Pac. (2d) 561). In the quoted portion of Section 16-1902, RCM, 1947, it is made the duty of the county clerk to tabulate "the surplus or unencumbered treasury balances at the close of such last fiscal year." Also, in that portion of Section 16-1904, RCM, 1947, which is set out above, it is required that "the cash balance in the fund at the close of the fiscal year" be separately stated. From these statutes, it must be concluded that there is no surplus until the end of the fiscal year and therefore, the commissioners are not authorized under Section 16-2048, RCM, 1947, to make any transfer prior to the end of the fiscal year, but such surplus must be used to meet the requirements of the ensuing budget.

It is therefore my opinion that under the County Budget Act, a transfer of money may not be made from the road fund to the bridge fund.

It is also my opinion that the board of county commissioners is not authorized to transfer any surplus money from one county fund to another county fund during the fiscal year and such so-called surplus monies must be used to reduce the tax for such fund in the next ensuing budget.

Very truly yours,
FORREST H. ANDERSON
Attorney General