

VOLUME NO. 36**Opinion No. 34****COUNTIES — Budget — Transfers — General Road Taxes; Vehicle License and Registration Fees; Proceeds of Road Bonds; Federal Forest Reserve Funds.**

- HELD:**
- 1. Funds obtained from general road taxes by a county, pursuant to Chapter 36, Title 32, Revised Codes of Montana 1947, may not be transferred to funds other than the County Road Fund.**
 - 2. Vehicle license and registration fees collected by the county pursuant to Chapter 37, Title 32, Revised Codes of Montana 1947 may not be transferred to funds other than the County Road Fund.**
 - 3. Proceeds of county highway bonds issued pursuant to Chapter 38, Title 32, Revised Codes of Montana 1947, may not be transferred to uses other than the particular construction or maintenance purposes for which said bonds were sold.**
 - 4. National forest receipts received by a county under Chapter 2, Section 500, Title 16, U.S.C., may be used only for public school and road building purposes. These funds may not be transferred to other uses pursuant to the general authority contained in section 16-1904(4), Revised Codes of Montana 1947, relating to the County Budgeting Act.**

October 15, 1975

Mr. John S. Henson
Mineral County Attorney
County Courthouse
Superior, Montana 59872

Dear Mr. Henson:

You have requested my opinion on the following question:

May a board of county commissioners, after compliance with the requirements of section 16-1904(4), Revised Codes of Montana 1947, transfer cash balances from the county road fund to the county poor fund?

The county road fund receives monies primarily from four sources. First, section 32-3601, R.C.M. 1947, allows the county commissioners to levy a general tax upon the taxable property in the county of not more than 12 mills, except in fourth, fifth, sixth and seventh class counties which may levy not more than 15 mills. Second, Chapter 37, Title 32, R.C.M. 1947, allocates all license and registration fees collected by the treasurer of the county in which a motor vehicle is registered to either the county road fund or the city road funds. Third, Chapter 38, Title 32, R.C.M. 1947, allows the county commissioners to issue, negotiate and sell coupon bonds on the credit of the county to construct, improve or acquire rights of way for public highways or bridges, and to refinance previously

issued highway or bridge bonds. Fourth, Chapter 2, Section 500, Title 16, U.S.C., allocates:

(t) twenty-five per centum of all monies received during any fiscal year from each national forest paid, at the end of such year, ... to be expended as the state legislature may prescribe for the benefit of the public schools and public roads of the county or counties in which such national forest is situated...

Pursuant to the directive contained in Section 500, the Montana legislature enacted sections 79-203 through 79-206, R.C.M. 1947. Section 79-205, apportions these forest reserve funds to each county in which the forest is situated between the general road fund and the common school fund on a percentage basis as follows:

...to the general road fund, 66 $\frac{2}{3}$ % of the total amount received. To the common school fund, 33 $\frac{1}{3}$ % of the total sum received. Provided that in counties wherein special road districts have been created according to law the Board of County Commissioners shall distribute a proportionate share of the 66 $\frac{2}{3}$ % of the total amount received for the general road fund to such special road district or districts within the county based upon the percentage that the total area of such road district bears to the total area of the entire county.

With respect to the first three of these four sources of funds, the legislature has clearly indicated that each source shall be used only for the specified purposes of county road work.

Section 32-3601, which authorizes a county to levy a general tax upon the taxable property in the county, provides at subdivision 3 that "all monies collected under this section shall belong to the county road fund".

Section 32-3706, which authorizes the allocation of vehicle license and registration fees to the county road fund, provides that:

The county road fund of each county shall be used for the construction, repair and maintenance of all public highways within its boundaries which are outside the corporate limits of any city or town and are not either state or federal highways.

Chapter 38, Title 32, R.C.M. 1947, authorizes the county commissioners to issue bonds on the credit of the county to construct or improve, or acquire rights of way for public highways or bridges, and to refund, pay and redeem optional, redeemable or maturing highway or bridge bonds when there are not sufficient funds available. The proceeds from these highway bonds must be used only for purposes for which they were sold. This consequence flows in part from section 11, Article VIII of the 1972 Constitution of Montana which provides:

(a) All money borrowed by or on behalf of ... any county ... shall be used only for purposes specified in the authorizing law.

Because the bonds authorized by section 32-3801, et seq. are general obligation bonds which pledge the credit of the county, the prohibition contained in section 11 is clearly applicable to prevent diversion of bond proceeds for uses other than those specified in Chapter 38, Title 32, R.C.M. 1947.

The remaining source of funds which are received by the county under the directive of Chapter 2, Section 500, Title 16, U.S.C. presents similar problems with respect to whether these funds may be diverted for purposes other than the benefit of schools or county roads. Section 500 specifically provides that these monies are to be:

expended as the state legislature may prescribe **for the benefit of the public schools and public roads** of the county or counties in which such national forest is situated... (Emphasis supplied)

Section 79-205 specifically provides that "the general road fund" and the "common school fund" shall receive various percentages of the total sum received by the county pursuant to Chapter 2, Section 500, Title 16, U.S.C. Special provision is made for distribution of these monies in counties wherein special road districts have been created.

Case law has not considered the precise question herein examined, to wit: Whether federal forest reserve funds may be diverted for purposes other than county roads and schools. Nonetheless, it is my opinion that Chapter 2, Section 500, Title 16, U.S.C., evidences a friendly purpose to create trusts for the benefit of counties in which national forests are located in recognition of the national interest in education and road building. This conclusion comports with the basic idea of a trust with donor, trustee, and beneficiary, the trust conferring discretion upon the trustee to direct the expenditure of the funds for the stated purposes, either or both, as in the judgment of the trustee may seem wise. Under such concept, the federal government is donor, the state government is discretionary trustee, and the counties are the beneficiaries, and the prescribed purposes are education and road building. In this connection, it should be noted that the federal allocation, after division between states, is only as between counties within a state. This definite allocation as between counties within the state, in light of the language of the statute providing that the funds are "for the benefit of the public schools and the public roads of the county or counties," and the clear placement of discretion in allocating funds on the state between these two purposes, makes it apparent that the statute gives considerably more evidence of the establishment of a true trust to carry out a wish and desire of the donor.

The language of the federal Supreme Court in **King County, Washington v. Seattle School District No. 1**, 263 U.S. 361, 44 S.Ct. 127, 68 L.Ed. 339 (1923), wherein it was held that a donor under Chapter 2, Section 500, Title 16, U.S.C., did not create a trust for the benefit of the several school districts of the several counties of the state in which the national forest lands were located, does not conflict with the concept that the federal act creates a trust for other beneficiaries.

The **King County** case merely holds that the particular school district involved in that litigation was not the beneficiary of whatever trust may have been created by payments pursuant to the federal legislation. The decision proceeds on the idea that even assuming a trust, the school district had no right to enforce it since it was not a beneficiary of the trust.

Indeed, the Supreme Court, in the **King County** case indicated at page 364 that:

[T]here is no limitation upon the power of the legislature to prescribe how the expenditures shall be made **for the purposes stated**, though, by the act of Congress, "there is a sacred obligation imposed on its public faith". [citations omitted]. (Emphasis supplied)

The Supreme Court again indicated at pages 364-365 that:

(t)he public school and public roads are provided and maintained by the state or its subdivisions, and the monies granted by the United States are assets in the hands of the state to be used **for the specified purposes** as it deems best (citations omitted). (Emphasis supplied)

From what has been said, it is clear that Chapter 2, Section 500, Title 16, U.S.C., evidences a friendly purpose to create trusts for the benefit of counties in which national forests are located only for the prescribed purposes of education and road building. See also **Long and Long v. Brown**, 4 Ala. 622 (1843); **Trinity Independent School District v. Walker County** (Texas), 287 S.W. 2d 717, 720-722 (1956).

THEREFORE, IT IS MY OPINION:

1. Funds obtained from general road taxes by a county, pursuant to Chapter 36, Title 32, Revised Codes of Montana 1947, may not be transferred to funds other than the County Road Fund.
2. Vehicle license and registration fees collected by the county pursuant to Chapter 37, Title 32, Revised Codes of Montana 1947, may not be transferred to funds other than the County Road Fund.
3. Proceeds of county highway bonds issued pursuant to Chapter 38, Title 32, Revised Codes of Montana 1947, may not be transferred to uses other than the particular construction or maintenance purposes for which said bonds were sold.
4. National forest receipts received by a county under Chapter 2, Section 500, Title 16, U.S.C., may be used only for public school and road building purposes. These funds may not be transferred to other uses pursuant to the general authority contained in section 16-1904(4), Revised Codes of Montana 1947, relating to the County Budgeting Act.

Very truly yours,

ROBERT L. WOODAHL
Attorney General