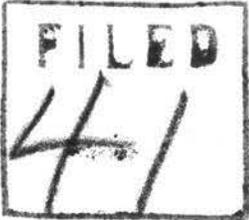


COUNTY TREASURER:
FUNDS, SURPLUS:
GENERAL REVENUE:

A balance accumulated in a special fund (County Superintendent of Schools Clerical Fund) maintained by a County Treasurer of a third class county, of funds received from the State of Missouri, under the provisions of Section 167.230 RSMo Cum. Supp. 1957, is to be returned to the State of Missouri at the end of each fiscal year in which such balance has accrued.



August 11, 1958

Hon. Haskell Holman
State Auditor
Jefferson City, Missouri

Dear Mr. Holman:

This is in response to your letter of July 25, 1958, which we quote as follows:

"Please furnish this Department with an official opinion on questions involved under circumstances as follows:

"A balance of \$6,880.89 has accumulated over a period of years in a special fund (County Superintendent of Schools Clerical Fund) maintained by a County Treasurer of a third class county, of funds received from the State of Missouri, under the provisions of Section 167.230 Cumulative Supplement, R.S.Mo., 1957. No contributions have been made by the County Court to this fund.

"The questions are - What disposition should be made of the accumulated balance?

"(1) Should it be transferred by the County Court as provided in Section 50.020, R.S. Mo., 1949?

"(2) Should it be refunded to the state under any statutory provisions?

"(3) Should it be used for subsequent payments of clerical assistance to the Superintendent of Schools for the State's proportionate part of the annual compensation

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(\$750.00) as provided in Section 167.230
Cumulative Supplement, R.S. Mo. 1957?
If so, can the State withhold further
payments of \$750.00 per year to the
county treasurer, until the accumulated
balance has been absorbed?"

It is the opinion of this office that the surplus moneys accumulated in a fund for County Superintendent of Schools Clerical Fund, surplus moneys which have been received from the State of Missouri for the purpose of such Clerical Fund, should be returned to the State of Missouri.

Your attention is directed to Section 167.230 RSMo Cum. Supp. 1957, which we consider to be the controlling statute with respect to this problem. It states:

"The county superintendent of public schools shall be allowed out of the county treasury not to exceed twenty-five per cent of his annual salary for actual and necessary traveling expenses. The county superintendent of public schools shall be permitted to employ clerical assistance, to whom there shall be paid not less than seven hundred and fifty dollars nor more than two thousand dollars annually to be determined and fixed by the county court, seven hundred and fifty dollars of which shall be paid by the state out of state school moneys, the same to be included by the state board of education as a part of the apportionment made before August thirty-first of each year. The county court shall, upon presentation of his bill properly setting forth his actual and necessary expenditures for traveling expenses draw a warrant upon the county treasurer for the payment of same. The county treasurer shall upon presentation of a proper bill by such clerical employee, or employees, such bill having been approved by the county superintendent and audited by the county court, draw a warrant each month for payment of same out of moneys provided by the state for such purpose, and the county court shall upon presentation of

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a proper bill by such clerical employee, or employees, such bill having been approved by the county superintendent, draw a warrant each month upon the county treasury for that part of the compensation for such purpose in excess of that provided by the state; provided, when the county superintendent shall furnish his own conveyance, the rate allowed for mileage shall be seven cents per mile for each mile actually and necessarily traveled; provided further, that all warrants in payment for clerical hire shall be drawn in favor of the person or persons who render such services, and in no case shall the county superintendent personally receive any part thereof."

We wish to particularly point out that sentence in Section 167.230 which authorizes the county treasurer to draw a warrant each month for payment of same to the clerical employee out of moneys provided by the state "for such purpose." It is obviously the purpose of this section that the moneys provided by the state are for the express purpose of the payment of the superintendent's clerical employees. An amount is established in excess of which funds provided by the state are not to be used in the payment of such clerical employees. This aids in establishing the point that the county court is not at complete liberty to spend the money of the state in any manner it wishes, and that it was the purpose of the statute that only a specified amount should be paid to the clerks for their duties.

It is conceivable that, although the statute contemplated that there would be hired clerks on an annual basis, there might be a period of time during the fiscal year, or a period of time in excess of a year, in which no person would be acting in the capacity of the superintendent's clerk; and it would be because of this lapse of time in which no such employment existed that a balance or surplus would be created.

We do not believe that it is the prerogative of the county court to dispose of this surplus by virtue of Section 50.020. We believe that this section is inapplicable to the specific fund which has been commenced and perpetuated by the generosity of the state.

Section 50.020, RSMo 1949, states:

"Whenever there is a balance in any county

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treasury in this state to the credit of any special fund, which is no longer needed for the purpose for which it was raised, the county court may, by order of record, direct that said balance be transferred to the credit of the general revenue fund of the county, or to such other fund as may, in their judgment, be in need of such balance."

You will note the phrase referring to a balance which is no longer needed for the purpose for which it was "raised." We think the term "raised" is very important, that when this section was written it was for the disposition of moneys which had been "raised" by the county. This section does not provide for the disposition of funds which have been provided by the state or federal government.

In reaching our conclusion we attempt to delineate the purpose of the statute. The amount of state funds to be used for the specified purpose is not to be in excess of \$750 annually. This same amount is apportioned annually by the State Board of Education solely for the stated purpose. Therefore, in a year in which the purpose of the statute is not carried out, and in the absence of any other dispositive scheme, the balance should be returned to the State of Missouri.

CONCLUSION

It is the opinion of this office that a balance accumulated in a special fund (County Superintendent of Schools Clerical Fund) maintained by a County Treasurer of a third class county, of funds received from the State of Missouri, under the provisions of Section 167.230, RSMo Cum. Supp. 1957, is to be returned to the State of Missouri at the end of each fiscal year in which such balance has accrued.

Very truly yours,

John M. Dalton
Attorney General

JBS:mjb