COUNTY BUDGET: In counties of second class money collected by county collector in December and turned over to county treasurer in January of succeeding year may be carried forward in budget as "cash surplus." County treasurer is not authorized to set up separate cash fund from previous years and refuse to pay warrants of current fiscal year from such fund.

Copy to J. Smith

FILED
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January 28, 1948

Honorable William H. Kimberlin
Legal Advisor
Buchanan County Court
St. Joseph, Missouri

Dear Sir:

This is in reply to your letter of recent date, requesting an official opinion of this department and reading, in part, as follows:

> "Over a period of several years this county has collected more than enough delinquent and non-delinquent taxes and revenues for the County General Revenue Fund to pay the outstanding warrants against that fund for each year.
>
> "Due to the fact that there was no provision in the old Constitution for spending balances from previous years the County Court left this accumulation in the General Revenue Fund to save interest on loans which would have otherwise been necessary, and to enable the county to retire warrants for the fiscal year at an earlier date.
>
> "This practice was followed during the year 1947, and at the end of the year there was not enough money in the hands of the County Treasurer to the credit of the General Revenue account to retire the warrants which were outstanding against that fund. However, during the month of December 1947, the County Collector collected more than enough money to be credited to the General Revenue Fund to retire these warrants, and he will deliver the December collections to the County Treasurer on January 15.

> "With a view toward spending the difference between the income and expenses of previous years, the Court has requested an opinion from me as to whether they are authorized under Section 10927 of the Laws of Missouri, page 606, - to carry forward such figures as an item of 'Cash Surplus' in the budget for 1948 considering that this money was credited to the General Revenue account and used to retire 1947 warrants.
>
> "The Court has also requested my opinion as to whether the County Treasurer is authorized to set up a separate cash fund of income from previous years and refuse to pay warrants of the fiscal year from that fund, with a view toward listing the amount of this fund as 'Cash Surplus' in the budget for the next year.
>
> * * * * * * *"

Section 10927, Laws of Missouri, 1945, page 606, provides, in part, as follows:

> " * * * Any cash surplus at the end of any fiscal year shall be carried forward and merged with the revenues of the succeeding year. Payment of any legal unpaid obligations of any prior year, however, shall be a first charge in the budget against the revenues of the budget year: * * *"

Since the unpaid obligations of 1947 are a first charge in the budget for 1948, we believe that the revenues of 1947 which were not turned in to the county treasurer until 1948 do, as a matter of fact, constitute a "cash surplus" and should be considered as such in making out the budget for 1948 and added to the anticipated revenue for 1948 in determining the total amount of the budget. The fact that the money is credited to the general revenue account and used to retire 1947 warrants does not affect this since the budget must provide for the payment of such 1947 warrants.

Since the quoted portion of Section 10927, supra, provides that the cash surplus at the end of any year shall be carried forward and merged with the revenues of the succeeding year, the county treasurer is not authorized to set up a separate fund from the income from previous years and cannot refuse to pay warrants of the current fiscal year from such fund. The provision of

Section 10927 requiring that the surplus be merged with the general revenue contemplates that all payments for previous years shall be a part of the budget, and since the funds from previous years are merged with the revenues of the current year, no separate fund can be set up, but payments of warrants drawn on such fund should be made without regard to the source of the revenues which constitute such fund.

## CONCLUSION

It is the opinion of this department that in counties of the second class the county court may carry forward as "cash surplus" money collected by the county collector in December but not paid to the county treasurer until the following January.

It is further the opinion of this department that the county treasurer may not set up a separate fund of income from previous years and refuse to pay warrants of the current fiscal year from such fund.

Respectfully submitted,

C. B. BURNS, Jr.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

CBB:HR