

**OPINION
60-46**

March 30, 1960(OPINION)

COUNTIES

RE: County Budget - Transference of Funds - Poor Relief Funds

This is in reply to your letter in which you state that on your recent examination of the offices of Pierce County your examiners found that the Board of County Commissioners transferred \$1,500.00 of institutional funds and \$12,000.00 of poor relief funds to the general fund of the county to provide funds for the general expenses of the county. You then ask whether such transfer is permissible and proper and whether they are required to be restored.

As to the item relating to institutional funds, I am not certain which fund is referred to, or what such fund entails. I am unable to find any statutory provision for such fund and for the time being I will pass over this question.

As to transferring funds, section 11-2307 of the North Dakota Revised Code in 1943 in substance provides that the county may transfer from any other fund except sinking and interest funds set aside to pay the principal and interest on outstanding bond issues, or from funds set aside to return any outstanding indebtedness, or from funds received from the state for road, bridge and highway purposes. This authority comes from the 1923 legislative enactment.

The poor relief funds in question here are funds which were created by chapter 50-03. The poor relief fund was created pursuant to Chapter 98 of the 1933 Session Laws.

Section 50-0303 of this law provides that:

RELIEF EXPENDITURES PAID FROM POOR RELIEF FUND. All expenditures by the county for the relief of the poor shall be paid out of the county poor relief fund. Such fund shall not be subject to any other charges and shall be exempt from the provisions of Section 21-0208."

The general rule of law on transfer of funds as found in McQuillin Municipal Corporations, revised, Volume 5, Section 2342 states that:

. . . .Sometimes, however, budget laws provide for the transfer of money from one fund to another. But statutes providing for the transfer of public funds from one fund to another will be strictly construed, and not extended beyond their plain terms. . . ."

This same section also states that:

. . . .Unless authorized to do so by statute or by charter, or possibly unless the loan is merely a temporary one, a municipality has no power to borrow from one city fund and use the money for other purposes, and replace the amount borrowed out of the next tax levy."

In our instance here we have a statute authorizing the county commissioners to transfer money from one fund to another. This is a general statute and contains certain limitations. The statute, of course, contains some exceptions, but as to our particular case we need not consider those exceptions. The authority is general in its nature.

The poor relief fund as created pursuant to the 1933 enactment is subsequent to the statute authorizing transfers. The statutes relating to the poor relief fund are special in nature and deal only with the poor relief fund; how it is created, how it may be expended, and how transfers may be made into the fund if the fund is not sufficient to take care of its needs, and so forth.

It is particularly noted that the statute specifically provides that the fund shall not be subject to any other charges. It also makes the fund an exception to section 21-0208. A transfer from the poor relief fund to the general fund would in effect be making said fund subject to other charges. The provision relating to the poor relief fund including the prohibition of subjecting such fund to other charges is, in my opinion, not merely an administrative provision but is substantive. I am satisfied that the Legislature here was not speaking of accounting methods and procedures, but the manner and for which such fund may be expended.

In addition to this, the statutes relating to the poor relief fund are special, whereas the statutes on transfer of funds is general. In addition to this, the statutes on the poor relief fund were enacted subsequent to the statutes on authorizing transfers. By transferring money from the poor relief fund to the general fund for general expenses, the county commissioners would in fact be doing indirectly what they are not authorized to do directly. The general rule of law is that a person may not do indirectly what he is prohibited from doing directly.

It is observed that the statute relating to the poor relief fund provides that transfer can be made into such fund if it is insufficient to meet the demands, but no provision is made that a transfer can be made out of such fund. Also recognizing that the fund is not subject to the provisions of section 21-0208 we come to the conclusion that the poor relief fund is a special fund.

It is therefore our opinion that the transfer from the poor relief fund to the general fund is an unauthorized improper transfer.

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