

June 28, 1947

Mr. W. S. Ferguson, Member,
Greenlee County Board of Supervisors,
Morenci, Arizona

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ARIZONA ATTORNEY GENERAL

Dear Mr. Ferguson:

We acknowledge your letter of 27 June 1947 in which you state that as of the start of the fiscal year 1947-48 on 1 July 1947 Greenlee County will have on hand a surplus which will be far in excess of the amount required to meet all budget items and all debts, expenditures, obligations and liabilities of said fiscal year. You further state the county will not need to levy or assess any amount to be raised by direct taxation for the fiscal year.

Upon this fact-situation you propound the following three questions:

1. May the Board of Supervisors, after July 1, 1947, order the county treasurer to transfer all, or any part of, the surplus to the county school fund?
2. If so, when can the Board of Supervisors take this action?
3. Surplus funds, over budgeted requirements, will exist in the county general fund, the county sales tax fund and special county road fund; may transfers ordered be made from any or all of these funds?

We believe your first question is fully answered by the provisions of Chapter 14, Laws 1947, Eighteenth Legislature, Regular Session. Section 1 of that act reads as follows:

"Circumstances permitting transfer of funds.

Any other statute to the contrary notwithstanding, whenever a county has on hand funds or revenues in excess of those required to meet all expenditures, debts, obligations and liabilities incurred or to be incurred under its current budget, and such county, because of the anticipated revenue to be derived from other sources, was not required to and did not levy and assess any amount to be raised by direct taxation to meet such expenditures, debts, obligations and liabilities, the board of

supervisors may order the county treasurer to transfer all or so much of such excess funds or revenue as it may in its discretion determine to the county school fund to be allocated and apportioned by the county school superintendent to the several school districts in the county in accordance with the provisions of section 54-608 (a), Arizona Code of 1939, as amended".

This statute is now the law of Arizona. In our opinion the provisions thereof permit the Board of Supervisors, under such a fact-situation as outlined above, in their discretion, to order transferred to the county school fund "all or so much of such excess funds or revenue as it may in its discretion determine to the county school fund * * * * *".

In answer to your second question, 73-502, A.C.A. 1939 provides that on or before the third Monday in July of each year the Board of Supervisors shall prepare an estimate of the different amounts which will be required for the public expense of the current fiscal year. This estimate fully itemized must be entered on the minutes of the board. Therefore, the existence and amounts of any surplus would not be known until that time. At the same time the Board must levy a special school district tax on the property in any district in which such levy is required. It follows that by the third Monday in July the Board should know the amounts of any surplus and the necessity for any school districts levy. Under 73-505, A.C.A. 1939, the Board must take into consideration in fixing the levy and assessing amounts to be raised by direct taxation, the unencumbered balances from the previous fiscal year.

In our opinion upon the completion of the budget estimates, the determination of the lack of necessity for levying assessments of direct taxes and the ascertainment of the existence of a surplus, if any, the board may, in its discretion, transfer at that time so much of the surplus as it deems necessary to the county school fund. The conditions of Chapter 14, supra, having been fulfilled by the county not levying and assessing any amount to be raised by direct taxation, the Board may at the time of the fulfillment of the conditions set out above and from time to time during the year transfer these excess amounts to the county school fund. However, we note that the amount necessary for the various school districts should be ascertained by the Board at the time it makes its budget estimates for the succeeding fiscal year.

W. S. Ferguson, Member
Greenlee County Board of Supervisors

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In answer to your third question we do not find that Chapter 14, supra, refers to any particular funds which must contain a surplus in order for the transfer to be made. Therefore in our opinion it is immaterial from which account or funds the surplus is transferred.

Very truly yours,

JOHN L. SULLIVAN,
Attorney General

JOHN W. ROOD,
Chief Assistant Attorney General

BURR SUTTER,
Assistant Attorney General

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