

Opinion No. 41-3974

December 18, 1941

BY: EDWARD P. CHASE, Attorney General

TO: Mr. C. R. Sebastian State Comptroller Santa Fe, New Mexico

{*140} In your letter of December 16, 1941, you request an opinion relative to the legality of the transfer of a surplus from the proceeds of the sale of an old courthouse building to the county road fund.

Section 33-5605 of the 1929 Compilation, as amended by Chapter 123, Laws of 1939, provides as follows:

"When any county may have a court house and jail which is not suitable or necessary for such county, the county commissioners thereof are hereby authorized to sell and dispose of such court house and jail and the land on which they may be situated in the manner provided by law and apply the proceeds thereof on liquidation of the cost and expenses of erecting such new court house and jail."

Section 33-5606 of the 1929 Compilation provides as follows:

"Any funds to the credit of the 'court house building fund' in any county which in the discretion of the county commissioners of such county, is not necessary for the purpose for which said fund was collected, the county commissioners of such **county** are hereby authorized to cause such funds to be transferred to the general school fund of such county."

The general rule covering this question is stated in Corpus Juris in this language:

"Where a statute directs the disposition of the surplus, or prohibits its disposition in a certain way, such direction or prohibition must be followed in cases in which it is applicable."

Since the two statutes above quoted direct the manner in which the surplus may be used and in view of the general rule, I do not believe that this surplus from the proceeds of the sale of an old courthouse can legally be transferred to the county road fund and used for some purpose contrary to the express statutory direction.