

County Treasurer, Payment of Warrants Out of Particular Funds. School Funds, Paying General Warrants From. Trust Funds, Should Be Held by Treasurer for Purposes of Trust.

The county treasurer is required to hold all school moneys and all other trust moneys for the purpose for which the fund was created.

April 6th, 1911.

Hon. C. E. Kumpe,
State Examiner,
Helena, Montana.

Dear, Sir:

Your letter of March 29th has been received, wherein you state

that in the course of examination of county offices a practice of several treasurers has been disclosed, who, with the consent, or on the order of the county commissioners, are in the habit of cashing warrants drawn on funds which are practically exhausted, with money from the trust funds such as district school, clerk of court deposits, etc., and request my opinion as to the legality of this procedure.

In reply, you are advised that by the provisions of Section 2896, Sub-division 6, of the Revised Codes, the county treasurer is required to keep all school moneys in a separate fund and to keep a separate account of the disbursement, and under the provisions of Section 941, the county treasurer is required to hold all school moneys as a special deposit and to keep a separate account of the disbursement. Section 997, Revised Codes, provides that school moneys can be used for no other than school purposes as provided in the section. Section 6706, Revised Codes, provides that money paid to the clerk of the court must be by him deposited with the county treasurer and by the county treasurer held subject to the order of the court. The treasurer has no authority to pay out school moneys or moneys deposited with him by the clerk of the court, or any other trust fund except for the purposes for which the fund was created, and when a warrant is presented to the treasurer for payment and the same is not paid for want of funds, the treasurer must endorse thereon, "Not paid for want of funds," annexing the date of presentation and sign his name thereto, and from that time until paid the warrant bears interest at 6% per annum, (Sec. 2989, R. C.). The treasurer has no authority to pay the warrant out of any special or trust fund and the board of county commissioners has no authority to order him to do so. The same principle applies with reference to the institute fund (Sec. 951, R. C.), moneys deposited by the public administrator (Sec. 3084, R. C.), and all other special or trust funds in his possession.

Yours very truly,

ALBERT J. GALEN,

Attorney General.