

Land Classification Fund—Outstanding Registered Warrants Against—Transfer of Money From General Fund to Take Up Land Classification Warrants.

The Board of County Commissioners are not authorized to transfer funds from the General Fund to the Classification Fund for the purpose of meeting warrants registered against the latter fund.

Horace S. Davis, Esq.,
County Attorney,
Big Timber, Montana.

My dear Mr. Davis:

You have inquired whether, when there are outstanding registered warrants against the Classification Fund provided for the expenses of classification of lands for taxation purposes under Chapter 239 of the Laws of 1921, and there are not funds sufficient in said fund to pay said warrants, the County Commissioners may transfer from the General Fund to the Classification Fund a sufficient amount to meet the warrants.

Section 4 of Chapter 239 of the Laws of 1921 requires the County Commissioners to create a "Classification Fund," and that warrants drawn in payment of services in connection with classification shall be drawn upon said fund. Section 5 reads as follows:

"Section 5. The Board of County Commissioners of each county shall levy annually a tax not to exceed one mill upon all of the properties situate in said county subject to taxation, which shall be levied and collected in the same manner as other taxes.

"All moneys collected in pursuance of the aforesaid levy shall be by the County Treasurer deposited to the credit of the 'Classification Fund' and shall not be used for any purpose other than as herein provided. Whenever the classification of all lands in any county shall have been completed and all warrants drawn upon the classification fund shall have been paid, the special levy herein provided shall cease and shall not be made by the Board of County Commissioners."

From the foregoing language it is apparent that it was the intention of the Legislature to pay for the classification required by said chapter out of the 1 per cent tax levy therein provided, the levy being required to be made as long as necessary for the purpose of classification. Furthermore Chapter 209 of the Laws of 1921 requires the disbursements of the county to be made according to budgets previously determined, Sections 5 and 6 of said Act reading as follows:

"Section 5. Each and every and all County Officers, institutions and agencies, including Boards of County Commissioners, shall be limited in their expenditures for the fiscal year for which such budget was made, to the amount and in the manner as in such budget, as finally approved, shall be set forth, provided that should any emergency or just cause arise for the allowance of a greater sum or sums for any particular office, officer, institution or agency of the county, and the County Commissioners shall have determined that such is an emergency or just cause for the allowance of the additional amount, they may permit expenditures to be made for such emergency or just cause and include the same in their estimate for tax levy in the succeeding fiscal year.

“Section 6. All budgets or applications for expenditures prepared and filed in accordance with the provisions hereof, shall be public records, and no warrant shall be drawn for any expenditure except those provided for in said budget.”

Under these sections any expenditure of county funds is prohibited unless provision has been made in the budget for the same, and if provision was properly made in the county budget for only the amounts necessary for the department budgets, it is difficult to see how a transfer could be made without taking funds which were collected for and are a part of a department budget. Moreover, the classification law requires all payments in connection with classification to be made by warrants drawn upon the Classification Fund, and this precludes drawing them upon the General Fund. But the transfer proposed would effect a payment out of the General Fund, thus accomplishing by indirection what is forbidden to be done directly, and is not permissible.

It is my opinion, therefore, that the County Commissioners are not authorized to transfer funds from the General Fund to the Classification Fund for the purpose of meeting warrants registered against the latter fund.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.