

Budget—Effect of on Warrants Outstanding Before Passage of Budget Law—Transfer of Money Between Funds Under the Budget Law.

Warrants outstanding before the passage of Chapter 209 of the Laws of 1921 are a charge upon the fund against which they are drawn, and other claims may not be given preference over them.

The Board of County Commissioners has no authority to transfer money from one fund to another under Chapter 209 of the Laws of 1921, until it becomes obvious that there is a surplus in a fund from which the transfer is to be made, over and above the requirements of the budget for which the tax was levied and collected.

Section 5 of Chapter 209 of the Laws of 1921 construed not to be in conflict with Section 6 thereof.

L. Q. Skelton, Esq.,
State Bank Examiner,
Helena, Montana.

My dear Mr. Skelton:

You have submitted the questions stated below with reference to the operation of the County Budget Law, which is Chapter 209 of the Laws of 1921. This law, after providing for the estimates of the various county offices, agencies and departments, and the making up of the budget and the levying of a tax to provide funds for the same, reads 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 thereof, shall be public records, and no warrant shall be drawn for any expenditure except those provided for in said budget,"

Your first question is: "Where there are outstanding warrants prior to the operation of this law, what is the remedy to pay same?"

This question is answered by a recent decision of the Supreme Court in *State ex. rel. Commissioners of Silver Bow County v. The District Court*, 62 Mont. 275, in which the following language was used:

"The warrants registered prior to July 1 were a direct charge upon the entire poor fund. They had been issued and registered under the statutes then in force and it would not have been competent for the legislature to give preference to other claims over them. (*People v. Austin*, 11 Colo. 134, 17 Pac. 485; *Rollins v. Board*, 199 Fed. 71; *Dillon on Municipal Corporations* (5th ed.), sec. 859; 15 C. J. 606). There is not anything in the legislation, however, to indicate an attempt to impair the obligation of those contracts."

Your second question is: "Has a Board of County Commissioners authority to transfer money between funds?"

The Budget Law contemplates that an accurate estimate of expenditures of the various departments of the county shall be made in advance and that taxes shall be levied only for these purposes, and the sections above quoted limit the expenditures definitely to such purposes and to the respective department budgets. While the County Commissioners have a large discretion in handling the affairs of the county, they being the chief executive authority of the county, the prohibitions of the foregoing section would prevent them from transferring money from any of the budgets comprising the county budget provided for in Chapter 209, at least until the end of the fiscal year or until such time as it becomes obvious and certain that there is a surplus in the fund from which the transfer is to be made, over and above the requirements of the budget for which the tax was levied and collected. Any other rule would nullify the Budget Law entirely. In support of this view, a further quotation from the *Silver Bow* case, *supra*, is pertinent:

"Heretofore we referred to the ordinary resources of the poor fund. Under certain circumstances moneys may be transferred from any other county fund (except the school fund) to the poor fund, but the all too-prevalent notion that such transfers may be made indiscriminately is erroneous. It is only the surplus in the other funds that may be transferred (sec. 2921, Rev. Codes)."

Your third question is: "Does not Section 5 conflict with the express language of Section 6 as relates to the drawing of warrants?"

Section 6 prohibits the drawing of warrants "for any expenditure except those provided for in said budget." The latter part of Section 5 makes provision for emergency cases, permitting expenditures to be made for emergencies, the amounts so expended to be included in the tax levy for the succeeding fiscal year. Construing these together and as part of the same Act, the emergency constitutes the exception to the prohibition of Section 6 and warrants may therefore properly be drawn for emergency purposes as provided in Section 5, and this action would not come within the prohibition of Section 6.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.