

**County Treasurer—Right to Refuse to Register Warrants  
for Claims for Future Rent of a Building.**

The County Treasurer has a right to refuse to register or pay warrants drawn upon claims presented to and allowed by the Board of County Commissioners for rent in advance for a certain building.

A. C. Erickson, Esq.,  
County Attorney,  
Plentywood, Montana.

My dear Mr. Erickson:

You have submitted to me the following question:

"On June 7th, 1922, the Board of County Commissioners of Sheridan County passed and allowed 5 separate claims in favor of the Plentywood Memorial Hospital Association aggregating the sum of \$2,400, purporting to be rent for 3 rooms for one year *in advance* to accommodate poor and venereal cases. This hospital is not now and has never been in operation, but interested parties have furnished bonds to the county which are supposed to be a guaranty that the hospital is to be operated during the year for which this rent is intended to cover.

"Warrants for the above sum have been drawn and presented to the county treasurer for registration, but he has refused to register them on the ground that payment of such claims is illegal for the reason that no services have been rendered the county and that the claims are not itemized as required by Section 2945, Revised Codes of 1907 (Section 4605, Revised Codes of 1921)."

You wish to know whether the County Treasurer was right in refusing to register or pay these warrants.

Section 4605 of the Revised Codes of 1921 provides:

"No account must be allowed by the board unless the same is made out in separate items, the nature of each item stated, and is verified by affidavit showing that the account is just and wholly unpaid; and if it is for official services for which no specified fees are fixed by law, the time actually and necessarily devoted to such service must be stated. Every claim against the county must be presented within a year after the last item accrued."

In the case of *State ex rel. Dolin v. Major*, 58 Mont. 140, at page 148, the court said:

"It will be noticed that under section 2894 the power of the board to settle and allow claims against the county seems to be limited to those in the form of accounts only; but, speaking generally, since the board has the exclusive power to act for the county and to control the disbursement of its funds, the word 'accounts' used therein must be understood in a broad, generic sense, and as including any right to or claim for money *which is due and payable from the county treasury*; for whether a claim, other than one of those expressly excepted, be technically in the form of an account or not, the board must recognize it *as a legal claim before it*

*can make an allowance of the amount of it and order its payment. Otherwise, the clerk may not draw a warrant on the treasurer in any case not directly authorized by section 3045."*

It is apparent that under Section 4605 an account or claim necessarily means an account or claim due and payable. No claim or account for services to be rendered could be allowed by the Board for the reason that there is no obligation upon the county. The services may never be performed. The Board is without power to anticipate their performance and settle for them in advance. In other words, the county is under no legal obligation to pay until the services have been performed.

The word "claim" in its ordinary sense imports the assertion, demand, or challenge, of something as a right; the assertion of a liability to the party making it to do some service or to pay a sum of money; the assertion of ownership or proprietary interest or other direct right or claim to the property itself; the assertion of a right; the assertion of an existing right; a demand of a right, or of an alleged or supposed right. (11 C. J. 816.)

As no claim or account can be legally presented for services not performed, the Board is without jurisdiction to issue a warrant, except where services have been rendered or liability incurred. If the warrants were issued without authority of law, it would follow that the action of the County Treasurer in refusing to register or pay them could be justified on mandamus by showing the manner in which they were issued.

In the case of *State ex rel. Danaher v. Miller*, 52 Mont. 562, 568, the court said:

"It is to be borne in mind further, that mandamus is not a writ of right. It issues only in the discretion of the court (*State ex rel. Donovan v. Barrett*, 30 Mont. 203, 81 Pac. 349; *State ex rel. Bailey v. Edwards*, 40 Mont. 313, 106 Pac. 703); and when it is made to appear that with reference to the very question at issue, the conduct of the party applying for the writ has been such as to render it inequitable to grant it, the relief may be refused. (*People ex rel. Durand L. I. Co. v. Jeroloman*, 139 N. Y. 14, 34 N. E. 726.) Courts are not created to aid in the perpetration of fraud."

I am, therefore, of the opinion that the County Treasurer has a right to question the legality of the warrants by refusing to register or pay the same.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.