

Appropriations — Warrants—State Auditor — Authority to Draw—Exhausted Funds.

The State Auditor has no authority to draw a warrant to pay a claim where no appropriation has been made for that purpose.

The State Auditor has no authority to draw a warrant on an exhausted fund.

Geo. P. Porter, Esq.,
State Auditor,
Helena, Montana.

My dear Mr. Porter:

You have requested the opinion of this office on the question whether you are allowed by law to draw a warrant to pay a claim where no appropriation has been made by the Legislature to provide for the same, and you state that you have taken the position that warrants may not be drawn by you under such circumstances.

Section 34 of Article V of the State Constitution reads as follows:

"No money shall be paid out of the treasury except upon appropriations made by law, and on warrant drawn by the proper officer, except interest on the public debt."

Section 235, Revised Codes of 1907, reads as follows:

"If no appropriation has been made for the payment of any claim presented to the board [of Examiners] the settlement of which is provided for by law, or if an appropriation made has been exhausted, the board must audit the same, and if they approve it, must transmit it to the Legislative assembly with a statement of their approval."

Section 243, Revised Codes of 1907, reads as follows:

"The state auditor must not draw his warrant for any claim unless it has been approved by the board, except for salaries or compensation of officers fixed by law."

Section 170, Revised Codes of 1907, reads in part as follows:

"It is the duty of the state auditor: * * *

"17. To draw warrants on the state treasurer for the payment of moneys directed by law to be paid out of the treasury; but no warrant must be drawn unless authorized by law, and upon an unexhausted specific appropriation provided by law to meet the same. * * *"

The position taken by you is in conformity with the law and with previous holdings of this Department. The foregoing sections of the Constitution and statutes seem to settle the question beyond doubt, and in my opinion you are not authorized to draw a warrant under the circumstances stated.

Very truly yours,
WELLINGTON D. RANKIN,
Attorney General.