Opinion No. 145.

Counties—County Commissioners—Funds—Poor Fund.

HELD: The County Commissioners may not set up, within the Poor Fund, separate funds ear-marked for the various items of expenditures, such as old age pension, aid to needy dependent children, etc., but all such expenditures are made from the Poor Fund as a whole.

August 26, 1937.

Hon. W. A. Brown
State Examiner
The capitol

Attention of Mr. A. J. Johnson,
Deputy State Examiner.

Dear Mr. Brown:

You have submitted to this office the statement that Lincoln County has over $25,000 in registered Poor Fund warrants. After each tax collection, cash transfers are made to cover the reimbursement payments to the Welfare Board from the Poor Fund of the county to an Old Age Pension fund and a Mothers' Pension fund. Then the reimbursements to the Welfare Board are made by the county from their Old Age Pension fund and Mothers' Pension fund. In your letter you state that the above procedure deprives registered warrant holders of their payments in order of registration.

Section 4465.4 provides that:

"The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To provide for the care and maintenance of the indigent sick, or the otherwise dependent poor of the county; erect and maintain hospitals therefor, or otherwise provide for the same, and to levy the necessary tax therefor per capita, not exceeding two ($2.00) dollars and a tax on property not exceeding three-fifths (3/5) of one per cent (1%) on either of such levies when both are not required, and to expend not to exceed five per cent (5%) of any such levy for the collection of said tax, or of any part thereof."

Prior to the enactment of Chapter 82 of the 1937 Session Laws, Section 335.24 provided that old age assistance should be paid from the county Poor Fund; and Section 10483, in reference to the act providing for the care of dependent and neglected children, provided that all warrants should be drawn upon the Poor Fund of the county, provided that the aggregate amount of such warrants would not exceed 50% of such fund.

Section 4754 provides for the redemption of warrants.

Section 4756 provides:

"Warrants drawn on the treasury and properly attested are entitled to preference as to payment out of moneys in the treasury properly applicable to such warrants according to the priority of time in which they were presented. The time of presenting such warrants must be noted by the treasurer, and upon the receipts of moneys into the treasury not otherwise appropriated, he must set apart the same, or so much thereof as is necessary for the payment of such warrants."

Subdivision (b), Section 11 of Part I of Chapter 82 of the 1937 Session Laws provides:

"It is hereby made the duty of the board of county commissioners in each county to levy the six mills required by law for the poor fund and to budget and expend so much of the funds in the county poor fund for all purposes of this act as will enable the county welfare department to meet its proportionate share of such assistance granted in the county, and the county budget shall make provision therefor and an account shall be established for such purpose."

Under the law as above referred to, prior to the enactment of said Chapter 82, there was no provision for a county to set up special funds within the poor fund. A county could not ear-mark its funds by the arbitrary creation of funds within the poor fund, and designate the same upon a poor fund warrant, but it must have regulated its expenditures for the various items and accounts within the poor fund through provisions of the budget law.

Under the provisions of Chapter 82, as above referred to, the legislature has not created any different classification of the poor fund than as prevailed prior to its enactment, and all moneys received from the levy as hereinbefore provided shall be placed to the credit of the poor fund. Registered warrants as provided for in the statutes above referred to must be paid in their order.