October 11, 1939.

Mr. I. M. Brandjord
State Administrator
Department of Public Welfare
Helena, Montana

My Dear Mr. Brandjord:

You have requested my opinion as to whether or not Musselshell County, under the facts given, is prohibited by Section 5 of Article XIII of the State Constitution, from issuing emergency warrants under the provisions of Chapter 85, Laws of 1937, as amended.

You state that "it is conceded that Musselshell County is considerably beyond the constitutional limitation of indebtedness of counties as fixed by Section 5 of Article XIII of the State Constitution."

The question arises in connection with the provisions of Section IX, Part II, of Chapter 82, Laws of 1937, as amended by Section 14, Chapter 129, Laws of 1939, which governs the granting of state funds to counties.

The question to be determined under the facts, it seems to me, is as to whether or not the issuing of such warrants in compliance with the provisions of said Chapter 85, supra, would constitute an indebtedness as that term is used in Article XIII of our Constitution. The question of what is an indebtedness under the provisions of our Constitution limiting the incurring of indebtedness by cities and towns, counties and school districts, as well as the state, has been many times before our supreme court for decision.

In the case of Farbo v. School District, 95 Mont. 531, at page 540, our supreme court said:

> "It has been observed, and aptly, that the word 'debt' * * and that, of course, is appropriate to the words 'indebted,' and 'indebtedness' * * has no fixed legal signification, as has the word 'contract,' but is used in different statutes and constitutions in senses varying from a very restricted to a very general one. Its meaning, therefore, in any particular statute or constitution, is to be determined by construction, and decisions upon one statute or constitution often tend to confuse rather

Opinion No. 149.

Counties — County Commissioners — Public Welfare—Emergency Relief Warrants—Constitution.

HELD: 1. Under Chapter 85, Laws, 1937, county commissioners may issue emergency relief warrants in anticipation of taxes actually levied, without creating a debt in violation of Section 5, Article XIII of the State Constitution.

2. The amount to be expended for any year may not exceed the anticipated revenue from such levy for that year.

3. Taxes levied for all purposes under Chapter 85, may not exceed in the aggregate one per cent of the taxable value of property within the subdivision.

than aid in ascertaining its signification in another. (Citing McNeal v. City of Waco, 89 Tex. 83, 33 S. W. 322.)"

Section 5, Article XIII, provides:

"No county shall be allowed to become indebted in any manner, or for any purpose, to an amount, including existing indebtedness, in the aggregate, exceeding five (5) per centum of the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness, and all bonds or obligations in excess of such amount given by or on behalf of such county shall be void. No county shall incur any indebtedness or liability for any single purpose to an amount exceeding ten thousand dollars ($10,000) without the approval of a majority of the electors thereof, voting at an election to be provided by law."

See also Section 4447, Revised Codes of Mont., 1935.

Chapter 85, supra, is designed to permit political subdivisions of the state, such as counties, school districts, and municipal corporations to cooperate with any federal agency in the construction, operation and maintenance of any projects sponsored by the state or any of such subdivisions. By Section 3 of the act, an "emergency relief fund" is provided to be set up, which shall consist of all moneys received by any such subdivision in the manner provided in said Act, and the governing body of such subdivision is authorized to issue warrants payable out of said emergency relief fund, in anticipation thereafter of the receipt of such moneys to be deposited in such fund as in said Act provided. Section 4 of the Act provides:

"The governing board or body of any such political subdivision is hereby empowered to levy annually a tax of not to exceed one-half of one per centum (½%) of the taxable value of the property upon which taxes are levied, collected and paid within such political subdivision to be ascertained as provided by law provided that the total tax levied under this act against any property of any political subdivision shall not exceed one per centum of the taxable value thereof."

(See also Section 4465.12, R. C. M., 1935.)

The Act then provided the manner in which any subdivision may initiate a project by advertising the nature of the project and the amount proposed to be expended. It then provides that no warrants may be issued if a certain per cent of the qualified electors of the subdivision shall file a written protest opposing the construction of such project. The Act further provides that such political subdivision must continue to sponsor such projects without recourse to the provisions of the Act where the same can be reasonably so sponsored from funds available through license taxes or from other sources, and such funds which may be reasonably used for the purpose shall be used to retire warrants issued under the act before taxes authorized under the act can be levied.

It will be noted that under the provisions of Chapter 85, political subdivisions are authorized to issue emergency warrants in anticipation of taxes. It may also be noted that expenditures are limited to the amount of taxes authorized to be levied, and are made payable out of a special fund provided therein to be set up. The Act further safeguards the expenditure by limiting the levy to one-half of one per cent in any one year, and to one per cent total.

After a lengthy review of the decisions, American Jurisprudence states the general rule as follows:

"Thus, it is the general rule that an obligaton for which an appropriation is made at the time of its creation from funds already in existance, or prospective and subject to appropriation, is not within the operation of a limitation of indebtedness, provided the taxes appropriated have been previously levied; at least this is true where payment of a warrant issued in anticipation of revenue is limited so far as the source is concerned, to the uncollected revenues. In other words, obligatons constituting debts within

the meaning of debt limit provisions are obligations other than liabilities which are to be discharged by funds already in the treasury or by revenues to be raised during the year within which the obligations are incurred. (Emphasis ours).

14 American Jurisprudence, p. 227.

It is likewise generally held that a county may issue warrants in anticipation of taxes without creating a debt within debt limitations prohibited by constitutional or statutory provisions. On this question, Corpus Juris has the following to say:

"The county may anticipate the revenue of the current year, and it does not contract a debt within the meaning of constitutional or statutory limitations when payment is to be made from funds on hand or from the taxes or other revenues of the current year."

15 C. J. 578 (Citing many cases from several jurisdictions.) (See also State v. Board of Trustees et al., 91 Mont. 300, at 305, 306.)

Our supreme court has had this question under consideration in several cases. The earliest of these are State v. The Great Falls Water Works, 19 Mont. 518; Davenport v. Kleinschmidt, 6 Mont. 502; State ex rel Helena Water Works Co. v. City of Helena, 27 Mont. 205; 24 M. 521. The Davenport case and the Great Falls case were cases involving the right of a city to contract for a water supply to be paid for by water rentals over a period of several years. In the first of these cases the court held, "That a contract which binds the city to take water from the contractor at an annual rent of $15,000 where the bonded indebtedness of the city is $19,500 and the floating indebtedness over $15,000, is in violation of the charter, as such a contract creates indebtedness within the meaning of such amending act." After the decision in this case, the legislature passed an Act (Laws, 1889, p. 185), conferring upon cities the power to levy and collect a tax not to exceed five mills on the dollar for fire and water purposes. The Great Falls case was decided in 1897 under the Act of 1889, supra, and held that in view of laws of 1889, amending the compiled statute so as to provide that the amount of taxes to be levied by a municipality for water purposes shall not exceed a certain per cent, etc., and thereby making liabilities of municipal corporations for water rentals under contracts with water companies payable out of a special fund, such liabilities are not debts, within the constitutional limitation.

In the Helena Water Works case (24 M. 521) decided in 1900, the court, commenting on the decisions in the Davenport and Great Falls cases, supra, says:

"The case of Davenport et al., v. Kleinschmidt et al., and the Great Falls case stand for two different and distinct principles. The first is an authority for the proposition that when a municipality has exceeded the constitutional limit of indebtedness a contract for a water supply, under which the city is liable generally, is the incurring of an indebtedness, within the meaning of the constitution, and the Great Falls case is an authority for the proposition that such a contract does not create an indebtedness when the city making the contract is authorized by law to levy a special tax expressly for the payment of such contract liability. In a case falling within the first class, the liability of the city is general, and is payable out of all its revenues; * * * *. In cases falling within the second class, the liability is special and is limited to the amount of the special tax the levy of which is expressly authorized by law."

In an exhaustive note on the subject of debt limitation provisions of state constitutions in 92 A. L. R., the general rule is stated to be that an obligation for which an appropriation is made at the time of its creation from funds already in existence, or prospective and subject to appropriation, is not within the operation of a limitation of indebtedness, in the absence of specific exceptions contained in such constitutional provisions, but that the aggregate of warrants drawn in anticipation of revenues must not exceed

the contemplated revenues for the year in which the taxes are levied.

(See Note, 92 A. L. R. 1299.)

Applying these holdings to the facts under consideration, and particularly in view of the decisions of our own supreme court, in the cases cited supra, it is my opinion that under the provisions of Chapter 85, Laws, 1937, Mussellshell County may issue emergency warrants, providing the taxes therein authorized to be levied have been actually levied. It is further my opinion that valid warrants may only be issued in the aggregate amount for any one year equal to the amount of taxes anticipated under a levy of one-half of one per cent of the taxable value of property upon which taxes are levied in the county and that the total amount expended for the purposes of said Chapter 85, to be raised by taxaton, may not exceed one per cent of the taxable value of property within said county.

o