

4. The by-laws of the fire district should designate the officers who shall have the authority to execute contracts on behalf of the fire district.

October 29, 1956

Mr. Henry I. Grant, Jr.,
County Attorney
Stillwater County
Columbus, Montana

Dear Mr. Grant:

You have requested my opinion concerning the authority of the trustees of a fire district to purchase a fire truck by means of a conditional sales contract. You advise me that the fire district was recently organized, has adopted a budget, and a levy has been made on the taxable property of the district.

Under subsection (b) of Section 11-2010, R.C.M., 1947, as amended by Chapter 75, Laws of 1953, the trustees of a fire district "shall have the authority to provide adequate and standard fire-fighting apparatus, equipment, housing and facilities for the protection of the district." This same statute authorizes a special levy to finance the operation of the fire district.

Prior to 1953 a fire district was authorized to issue bonds, after an approving vote of the electors, to purchase the necessary fire protection equipment. Chapter 75, Laws of 1953, repealed the code sections which permitted the issuance of bonds. As a consequence, the financing of the fire equipment must be carried out under the current budget.

It has long been the practice to permit municipal corporations and legal subdivisions to make purchases on credit. This rule is well expressed in 38 Am. Jur. 92, where the text states:

" . . . A distinction is drawn between borrowing money and obtaining property or labor on credit, since it is everywhere held that a municipal corporation has an implied power to use its credit

Opinion No. 84
Fire Districts —
Purchases on Credit —
Budgets — Warrants

HELD: 1. The trustees of a fire district have the authority to enter into conditional sales contracts to purchase necessary fire fighting equipment for the fire district.

2. The trustees of a fire district may issue warrants up to the amount of the budget appropriations notwithstanding the fact that there is no money in the fund.

3. It is advisable that the trustees of a fire district solicit bids by advertising for the purchase of equipment.

for the accomplishment of any object for which it is authorized by law to expend money. . . .”

There is no statute which prescribes any limitation on the term of conditional sales contracts to finance the purchases by fire districts. Section 11-2010, R.C.M., 1947, as amended, provides “The budget laws relating to county budgets, shall, as far as applicable, apply to fire districts.” Boards of county commissioners in purchasing automobiles must observe the restrictions of Section 16-1803, R.C.M., 1947, which limits installment contracts to a period of three years and also requires solicitation of bids by newspaper advertisements. This code section is not a part of the budget act and does not apply to fire districts. However, it does establish a guide for a good procedure to follow by the trustees of fire districts.

As your fire district is newly organized, there is no cash on hand to meet the appropriations of the budget and as a consequence it is necessary to use the credit of the district to make the necessary purchases to fulfill the purposes of its creation. Having adopted a budget, warrants may be issued against the appropriations notwithstanding the fact that there is not, at the present time, cash to pay the warrants. The Great Northern Railway Co. vs. Phillips County, 112 Mont. 542, 118 Pac. (2d) 754, the opinion construed the budget law and said:

“The Budget Act does not prohibit the issuance of warrants so long as they are within the budget appropriations. Section 4613.5 prohibits the issuance of warrants ‘in excess of any of the budget detailed appropriations,’ except for emergencies covered by section 4613.6, not necessary to be considered in this case. It contemplates that warrants may be issued up to the budget appropriation for each item in the budget. If there is no money in that particular fund to pay the warrants, they are registered. . . . When such warrants are issued, the amount of principal and interest must then be taken into consideration in fixing the budget and for the succeeding year.”

The fact the fire district is authorized to issue warrants in anticipation of tax money does not involve the county’s credit in any manner. The rule which applies is expressed in Witter vs. Phillips County, 111 Mont. 352, 109 Pac. (2d) 56, as follows:

“ . . . It is, of course, elementary that, as a general rule, warrants payable out of a special fund cannot be made the general obligation of the county, but resort must be had to that fund only. . . .”

As the statutes do not designate the manner in which the trustees of a fire district are to execute contracts reliance must be placed on Section 11-2010, R.C.M., 1947, as amended, which grants the power to adopt suitable by-laws. One of the by-laws should designate the officers who may execute contracts on behalf of the fire district.

It is therefore my opinion that:

1. The trustees of a fire district have the authority to enter into conditional sales contracts to purchase necessary fire-fighting equipment for the fire district.
2. The trustees of a fire district may issue warrants up to the budget appropriations notwithstanding the fact that there is no money in the fund.
3. It is advisable that the trustees of a fire district solicit bids by advertising for the purchase of equipment.
4. The by-laws of the fire district should designate the officers who shall have the authority to execute contracts on behalf of the fire district.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.