

**State Auditor—Assignment of Claims Filed With—Duty Of—
Benner, Claim Of—Sec. 687, Political Code.**

State Auditor cannot draw warrant in favor of alleged assignee of claim, unless he has conclusive proof binding upon the assignor that the claim has been assigned.

Helena, Montana, May 11, 1905.

Hon. Harry R. Cunningham, State Auditor, Helena, Montana.

Dear Sir:—In your communication to this office of May 8, you make inquiry as to the proper action to be taken by you relating to the payment of the claim of H. E. Benner.

On March 3, 1905, an act of the legislative assembly was approved, appropriating certain sums of money in payment of the bills of a number of persons, among which appears the name of H. E. Benner, and by the act \$360 is placed to his credit. Under Section 2 of this act the state auditor is authorized and directed to draw his warrant in favor of the persons named in the act.

In your communication you state that there is no record of an assignment of this claim, to any one in your office. An assignment of a claim against the State should be filed in the office of the state auditor. The board of examiners has nothing to do with the assignment, its function being to pass upon the claim, and if allowed, it must endorse thereon, over the signatures of the members of the board, the words "approved for the sum of _____ dollars," and the auditor must draw his warrant for the amount so approved in favor of the claimant or his assigns. (Sec. 687, Pol. Code.) Before, however, the auditor is justified in drawing his warrant in favor of an assignee he must have proof that is conclusive against the assignor that the claim has been assigned; otherwise the assignor could subsequently demand the warrant of the auditor on the ground that no assignment had ever been made.

If you do not have this proof you cannot safely issue a warrant to any one claiming to be the assignee of Benner. There appears to be some evidence that this claim, or some part of it, has heretofore been assigned, though that evidence does not appear to have reached your office.

In view of these conflicting claims it would perhaps be the safer course to take advantage of the law, which permits questions of this kind to be submitted to the courts for determination, and in case you decide upon this course we will be pleased to prepare the necessary papers, if you so desire it.

Yours very truly,

ALBERT J. GALEN,
Attorney General.