

Arid Land Grant Commission, Warrants Issued By, Payment Of.

Chapter CXIV, Laws 1903, repealed the law of 1897, p. 189, which provided for the State Arid Land Grant Commission and for funds A. B. and C. This law, however, made no provision for the payment of the warrants issued by the Arid Land Grant Commission against funds A. B. and C. Chapter 105, Laws 1905, defining additional duties of the Carey Land Act Board, makes provision for the payment of the warrants issued by the Arid Land Grant Commission under the law repealed as aforesaid. Therefore, the holders of such warrants can look only to the fund provided for by the act of 1905 for payment of their warrants.

Helena, Montana, Oct. 25, 1905.

Hon. J. H. Rice, State Treasurer, Helena, Montana.

Dear Sir:—Your request for an opinion, accompanied by a letter to you from Mr. E. W. Brandegee, in which he demands payment of warrant No. 42, issued by the State Arid Land Grant Commission for expenses incurred in District No. 4, received.

Some time ago Mr. Brandegee addressed a letter to this office in which he claimed that moneys collected by C. K. Reeder, agent of the Carey Land Act Board, should be deposited to the credit of fund "C," as provided by Section 3548, Senate Bill No. 95, laws of 1897, p. 189.

The question to be determined in this matter is, into what fund must the moneys received for the use of water out of the canal in District No. 4 be paid, and what provision of law is now in force providing for the payment of warrants heretofore issued by the State Arid Land Grant Commission?

By said Senate Bill No. 95, amending Sections 3530 to 3547, Political Code, and adding thereto Sections 3548 to 3559F, provision was made for three different funds into which were to be paid moneys received from the various sources by the State Arid Land Grant Commission. Under Section 3543 all money received from the sale of bonds was to be paid to the state treasurer and placed to the credit of fund "A." Under Section 3547 all money derived from the sale of lands in any district, or from the sale of water, or any profit or increase whatever, except moneys belonging to the maintenance fund, as hereinafter provided, was to be deposited with the state treasurer and placed to the credit of fund "B." Under Section 3548 all moneys paid under this act as water rates and twenty-five per cent of the money received from water sales mentioned in Section 3547 was to be deposited with the state treasurer to the credit of fund "C." Out of fund "C" the cost of maintaining and operating and improving said water plant or system in said District was to be paid by warrants drawn against such fund.

However, by Chapter CXIV, laws 1903, p. 211, Sections 3530 to 3559F, as amended and enacted by said Senate Bill No. 95, were repealed and the said Arid Land Grant Commission abolished. By this repeal of said Senate Bill No. 95, the sections providing for funds A, B and C, as mentioned above, ceased to have any force and effect, provided that subsequent legislation established some other manner of paying warrants lawfully issued by the Arid Land Grant Commission against said funds. Said Chapter CXIV, repealed said Senate Bill No. 95 and established the Carey Land Act Board, but made no provision for the payment of outstanding warrants issued by the Arid Land Grant Commission.

Section 2, of the act establishing the Carey Land Act Board, (Chapter CXIV, laws 1903,) provided "that it shall be the successor of the State Arid Land Grant Commission and as such successor shall perform the same duties pertaining to unfinished contracts as were imposed upon said Commission, "so far as the same may be necessary to complete such contracts." But nowhere in such act did it make provision for the payment of warrants issued for work already done under authority of the State Arid Land Grant Commission, the authority of the act simply extending to the "unfinished contracts," and defining its powers and duties "so far as the same may be necessary to complete such contracts." Therefore, in several opinions issued by this office prior to March 8, 1905, it was held that money received from the various sources mentioned in said Section 3548 of said Senate Bill No. 95 must still be placed to the credit of fund C and paid out in the order in which they were registered when there was money in the fund sufficient to pay the same. However, the legislature of 1905, by Chapter 105, approved March 8, 1905, enacted a law defining additional duties of the Carey Land Act Board,

relieving the State of liability, providing the method of letting contracts, providing for the ratification of contracts for the classification and disposal of lands and the disposition of funds thus derived, etc. By Section 11 of this act, it was provided that where the Carey Land Act Board entered into a contract with any person to construct canals or other irrigation works that the contractor should receive water rates for the use of water sold or rented "until perpetual water rights appurtenant to ninety per cent of the lands, to reclaim which such works were constructed, have been sold and paid for." This section seems to provide the manner of disposing of the money received from the sale of water prior to the time that the settler has paid for and got a deed to his land, and it would seem that where the contractor has sold the canal to the State the State would receive and handle money paid for the use of water in the same manner and for the same purpose as the contractor would under said Section 11.

Chapter CXIV, laws 1903, repealed the law providing for funds A, B and C and made no provision for a fund or funds in lieu thereof, and, by necessary implication, thereafter all moneys collected should have been paid into the treasury and credited to the said Board. By Section 25 of the act of 1905 a fund known as the Carey Land Act Fund is provided for, and all moneys received by the board from the sale or leasing of lands reclaimed under the provisions of this act should be deposited on the last day of each month with the State Treasurer to the credit of this fund. After the passage of said law of 1903, and until the passage of said law of 1905, there might have been question as to the use to which said fund could be applied, but said Section 25, providing for this fund, specifically designates for what purposes the moneys paid into such fund may be used. First, for the payment of the current expenses of the board and of the state engineer's office, hereafter incurred in carrying out the provisions of this act; second, to reimburse the state general fund for expenses of the board and the state engineer, to the amount of \$4,000 heretofore paid out of the general fund; third, to reimburse the State for expenses of the State Arid Land Grant Commission, to the amount of \$5,707.65 heretofore paid out of the general fund; fourth, "After paying the current expenses and reimbursements above designated, if there be a balance in said fund, there shall be estimated, by the Board, the sum that in its judgment will suffice for its next two years expenses, and whenever the remainder in said fund, less said estimate, shall equal two thousand dollars, the same shall be applied pro rata to the payment of warrants issued by the State Arid Land Grant Commission for expenses incurred by it, against Districts Nos. 1, 2 and 4, and open accounts which are credited on the ledger of said Commission to sundry persons for supplies furnished, the aggregate of said warrants and accounts being, without interest, \$18,697.45; and any balance remaining shall constitute a Trust Fund in the hands of the State Treasurer, the same to be used only for the reclamation of other arid lands."

By subdivision 4, of said Section 25, the legislature has provided the manner and designated the fund out of which the payment of the war-

rant of Mr. Brandegee, and all other warrants issued by the State Arid Land Grant Commission for expenses incurred by it against Districts 1, 2 and 4, shall be made. Chapter CXIV, laws 1903, having repealed the sections providing for funds A, B and C, and Chapter 105, laws 1905, having made provision for the payment of the warrants issued under the law providing for said funds A, B and C, you are advised that the law authorizing you to carry said funds A, B and C upon your books has no further force or effect whatever, and that the only fund out of which you may now pay outstanding warrants issued by the State Arid Land Grant Commission is the fund provided for by said Section 25, Chapter 105, laws or 1905.

It is the general rule of law that the manner of paying a debt, or the remedy for enforcing a contract, may be changed by the legislature without impairing the obligation of a contract.

Cooley on Constitutional Limitations (7th Ed.) p. 406, says:

"It has accordingly been held that laws changing remedies for the enforcement of legal contracts, or abolishing one remedy where two or more exist, may be perfectly valid, even though the new or the remaining remedy be less convenient than that which was abolished, or less prompt and speedy.

"Without impairing the obligation of the contract, the remedy may certainly be modified as the wisdom of the nation shall direct."

As to impairing contract and suit against State, see *State v. Moore*, 50 Neb. 93.

By repealing said Senate Bill No. 95, laws 1897, which contains the sections providing for funds A, B and C, and thereafter enacting Chapter 105, laws 1905, providing for the payment of the warrants issued by the State Arid Land Grant Commission against funds A, B and C, the legislature has in no way impaired the obligation of a contract; it has not attempted to invalidate or repudiate the debt. By consolidating funds A, B and C into the Carey Land Act Fund, the legislature has simply provided a fund under a different name but which fund consists in the aggregate of the money heretofore paid into funds A, B and C.

There can be no question but what the money that will in the future be received and credited to this fund will make it available for the payment of said \$18,697.45 as speedily as the same could have been paid from fund A, B and C under the repealed law. It is no more an impairment of the obligation of a contract for the legislature to provide a different fund or change the name of a fund, out of which debts created by the contract are to be paid, than it is to change the remedy for the enforcement of such contract. The legislature, by Chapter 105, laws 1905, has designated the fund out of which these outstanding warrants are to be paid, and it is your duty to follow this law until the same is amended, repealed or set aside by the courts. Therefore, the holders of such warrants can look only to the fund provided for by the act of 1905 for the payment of their warrants.

You are further advised that as the law creating funds A, B and C has been repealed and the Carey Land Fund provided for in lieu thereof,

that all moneys now in your hands, or that may hereafter be deposited with you by the Carey Land Act Board from any of the sources mentioned in said Chapter 105, laws 1905, should be placed by you to the credit of the Carey Land Act Fund mentioned in Section 25 of said act, and it is the duty of the Carey Land Act Board on the last day of each month to deposit any moneys received by it with you, as state treasurer, to be so credited.

Respectfully submitted,

ALBERT J. GALEN,

Attorney General.