

**Arid Land Grant Commission, Warrants Issued By Them
When Payable**

Warrants issued by the State Arid Land Grant Commission to meet the preliminary expenses incurred on account of any water system are due and payable when issued and presented for payment; provided there is any money in either Fund A or Fund C with which to pay them. If not, they are payable as soon as there is any money in either of said funds from which the payment may be made.

February 11, 1905.

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

Dear Sir:—Your letter of the 10th instant, enclosing two warrants issued by the State Arid Land Grant Commission to Donald Bradford, one for \$200 and the other for \$351, duly received. I note that you desire the opinion of this office as to whether these warrants should be paid out of Fund C of District No. 4, and whether said warrants are due and payable at this time.

The two warrants, except as to amount and date, are identical, one of them reading as follows:

STATE OF MONTANA.

District No. 4.

No. 38.

\$200.00

Helena, Montana,190...

THE STATE ARID LAND GRANT COMMISSION

Will pay to Donald Bradford or order Two Hundred Dollars with interest at the rate of seven per cent per annum from date of issue until called, out of any funds that may be received by it from the sale of bonds or

from annual tolls or rentals for the use of water, or from funds received on account of said District from any other source.

DONALD BRADFORD,

Vice Chairman.

(Seal)

Attest: D. A. CORY,

Secretary.

Interest will cease on day of published call.

Warrants must be signed by the chairman or vice-chairman.

Upon the back of said warrant is printed the following:

"This warrant is issued under authority of the following Act of the Legislative Assembly of the State of Montana, approved February 13, 1899: Article II, Title VIII, Part III, Section 3546A. 'Said Commission hereby authorized and empowered to issue warrants to meet preliminary expenses necessarily incurred on account of any water system, which warrants shall bear interest at the rate of seven (7) per cent per annum, and be paid out of any funds received by said Commission on account of such system.'" There is endorsed across the face of such warrant, in red ink, in one place the words "Fund A", and in another place the following: "Presented for payment and not paid for want of funds and registered in this office this Feb. 27, 1902. A. H. Barret, State Treas. Rochester."

You will observe that this warrant upon its face directs that payment be made "out of any funds that may be received by it from the sale of bonds or from annual tolls or rentals for the use of water, or from funds received on account of said district from any other source." This direction embodied in the warrant, however, is binding and to be observed by you only so far as it is authorized by the law under which the warrant was issued.

It has been held by this office, in an opinion rendered February 4, 1902, to the Secretary of the State Arid Land Grant Commission, that, notwithstanding the authority given to the commission to issue warrants to meet preliminary expenses by Section 3546 A, Political Code (Session Laws 1899, p. 53), and the provision that said warrants shall "be paid out of any funds received by said commission on account of such system" such warrants could not under any circumstances be paid out of Fund B. It was held that such warrants must be paid out of Fund A or, in case there is no money in Fund A, then out of Fund C.

For your information and guidance in future cases, I enclose you herewith a copy of such opinion, from which you will see that the question is quite thoroughly discussed and the liabilities against the respective funds A, B and C defined.

You do not state whether there is at present any money available for the payment of these warrants or not. Under the law all warrants drawn against Fund A should be paid out of that fund if there is any money in it with which to make the payment and if there is not, then payment should be made out of Fund C, in the order in which such warrants are presented for payment.

As to the question of whether they are now due and payable, of course

such warrants are payable as soon as issued and presented for payment, provided there are funds in either Fund A or Fund C with which to pay them. That there was not money in either Fund A or Fund C available for the payment of these warrants upon their presentation is apparent from the endorsement of the treasurer to that effect upon the face of the warrants.

The only question now is, is there any money on hand in either Fund A or Fund C of District No. 4 with which to pay the same at this time? If so, then they are payable; if not, of course they cannot be paid, for it has been held that such warrants are a charge against the State Arid Land Grand funds only and not in any sense against the State of Montana. (State ex rel. Armington v. Wright, 17 Mont. 565.,

I trust that the foregoing will fully answer your inquiry, and return herewith said warrants.

Yours very truly,

ALBERT J. GALEN.

Attorney General.