

County Warrants, Transferree Takes Them Subject to All Legal and Equitable Defenses. County Treasurer, Has No Authority to Pay Warrants Illegally Issued.

The transferee of a county warrant takes it subject to all legal and equitable defenses which extended to it in the hands of the payee, and if illegally issued, the county treasurer has no authority to pay the same.

Helena, Montana, July 2, 1910.

Mr. H. C. Schultz,
County Attorney,
Thompson Falls, Montana.

Dear Sir:—

In reply to your inquiry, made to us in person, on June 30, as to whether or not the county treasurer should pay a warrant issued to Mr. E. D. Peak, and subsequently endorsed and transferred by him to a bank in your town, which warrant was illegally issued, for the reason that the employment of Mr. Peak by the board of county commissioners was void, will say:

The transferee of municipal warrants takes them subject to all legal and equitable defenses which extended to them in the hands of the payee; they are not negotiable instruments in the sense of the law merchant so that when held by a bona fide purchaser, evidence of their invalidity or defense available against the original payee would be excluded.

Daniel on Negotiable Instruments, (5th Ed.), Sec. 427;
Wall v. County of Monroe, 103 U. S. 77;
Dillon's Municipal Corporations (4th Ed.), Sec. 503;
Randolph on Com. Paper (2nd Ed.) Sec. 389.
7 Cyc., p. 539;
Shakespear v. Smith, 77. Cal., p 38;
Dana v. San Francisco, 19 Cal. 486;
Shephard v. Richland District, 22 Iowa 595;
Miner v. Vedder, 66 Mich. 101.

County warrants acquire no greater validity in the hands of third parties than they originally possessed in the hands of the first holder, no matter for what consideration they may have been transferred or

in what faith they may have been taken. If illegal when issued, they are illegal for all time.

The protection which attends the purchaser of negotiable paper before maturity, without notice of the illegality of its consideration, does not extend to like purchasers of county warrants. Were this otherwise, it is easy to see that the county would be entirely at the mercy of the board. A transfer of the warrant, no matter how illegal the claim for which it was issued, would leave the county remediless.

People v. Board of Supervisors, 11 Cal. 170;

Shakespear v. Smith, 77 Cal. 641;

Sturtevant v. Liberty, 46 Me. 459.

The warrant is not intended to constitute a new debt, or evidence of a new debt, against the county, but is the prescribed means the law fixed for transferring money from the county treasury.

Dana v. City of San Francisco, 19 Cal. 491.

As the holder of municipal warrants stands in the shoes of the payee of the warrant, any defense which is available against the payee may also be set up as against the holder of the warrant, whether transferred by endorsement or otherwise. This being the case, as the payee of the warrant would be unable to collect it, for the reason that the county has an absolute defense to its payment, the same being illegally issued, the treasurer would have no right to pay the warrant to any transferee thereof any more than he would to the original payee.

If the instrument is void ab initio, even though it be negotiable, the defense of illegality is available even against an innocent purchaser for value before maturity and without notice.

8 Cyc. p. 46, and numerous cases cited.

In our opinion the county treasurer should refuse to pay this warrant, if the same was illegally issued, or if the county would have a defense to the payment of the warrant against the original payee.

Yours very truly,

ALBERT J. GALEN,

Attorney General.

P. S. We return herewith the papers which you left with us in the matter of *J. A. McGowan v. The Board of County Commissioners and E. D. Peak*.

A. J. G.