

State Auditor, Duty of to Issue in Aid of Disability Fund of Fire Departments. Chapter 129, Laws of 1911, Unconstitutional. Appropriation.

Chapter 129 of the Laws of 1911, providing for the firemen's disability fund is unconstitutional. The state auditor cannot comply with the provisions of Sec. 3 of such act by making payment to city treasurers, as therein required, there having been no special appropriation made with which to meet such payment.

August 23, 1912.

Hon. Charles H. McCoy,
State Auditor,
Helena, Montana.

Dear Sir:

I am in receipt of your letter of August 9th submitting the question:

"As to the duty of the State Auditor to issue state warrants in favor of the treasurers of the various cities of the state as provided in Sec. 3, Chap. 129, Laws of 1911."

Sec. 34, Art. V., State Constitution, provides that no money shall be paid out of the treasury except upon appropriations made by law, and Subdivision 17 of Sec. 170, Revised Codes, is even more specific and provides that no warrant must be drawn unless authorized by law and upon the unexhausted specific appropriation provided by law to meet the same. The provisions of said Sec. 3, Chap. 129, seems to authorize the drawing of the warrants but unless there is an appropriation "to meet the same" when drawn you are prohibited by the provisions of the Constitution and statute from drawing warrants—in other words the provisions of said Sec. 3, become inoperative until the legislature has provided the fund and made the necessary appropriation. No appropriation was ever made to meet the expenses or to pay

the warrants which said Sec. 3 authorizes to be drawn. It cannot be contended that this Section is itself an appropriation bill for if regarded as an appropriation bill it would be continuous, running year after year, while the provisions of our State Constitution are emphatic that no appropriation shall be made for a longer term than two years.

Art. XII, Sec. 12, State Constitution.

Said Chapter 129 also embraces two or more subjects while the Constitution provides that all appropriation bills other than the general appropriation bills shall embrace but one subject.

Sec. 33, Art. V, State Constitution.

You will notice that by the provisions of this Chap. 129 that the payment of the warrants therein provided for is not made from any trust fund created nor is the money received from insurance companies under the provisions of Sec. 4017, kept in a separate fund but that the warrants so drawn by the auditor are paid "out of the general revenue fund of this State" (Sec 4, Chap. 129).

A legislative appropriation is therefore necessary to give you authority to draw the warrants and as no such appropriation has been made you cannot legally at this time draw the warrants named in Sec. 3, of said Chapter 129.

Yours very truly,

ALBERT J. GALEN,

Attorney General.