

Schools—Warrants in Excess of Funds, Payment Of.

Warrants issued in excess of funds, and where taxes collected for the current year are applied to warrants issued for such year, must await payment until the action of the board is approved by a special levy to provide for them.

January 24th, 1920.

Hon. C. R. Stranahan,
County Attorney,
Havre, Montana.

Dear Sir:

Replying to your letter of January 17th, 1920, regarding the issuing of warrants by School District No. 16 in excess of funds to the credit of the district on the date of issue:

From your letter it appears that the School Board of this district had, prior to the levy of taxes in July, 1919, issued warrants in excess of funds to the credit of the district, in the amount of \$56,006.57, in disregard of the provisions of Subdivision 9 of Section 302 of the General School Laws, which provides:

“Such warrants shall show for what purpose the money is required, and no such warrants shall be drawn unless there is money in the treasury of such district; providing that school trustees shall have the authority to issue warrants in anticipation of school monies which have been levied but not collected for the payment of current expenses of schools, and such warrants shall not be drawn in any amount in excess of the sum already levied.”

It further appears that at this time there are unpaid warrants in the amount of \$108,858.00, whereas the total amount of tax levied and collected by the district up to January, 1920, amounted to \$58,402.59.

There will be additional money apportioned to the district by the State Superintendent of Schools, but the outstanding warrants at this time will probably consume the entire amount of money whether now collected or due the district, and thus leave the district entirely depleted of funds.

The question then is, in what order these warrants should be paid, if in fact they are entitled to be paid.

That a school district cannot become indebted except upon a vote of the district, and for the purposes expressly enumerated in the statute, and for which the district may issue bonds, has been repeatedly held by this office. However, since the board have, in disregard of their authority, issued warrants in excess of taxes levied for the year in which they were issued, I am of the opinion that these warrants cannot be paid out of taxes levied for the succeeding year. It was held under a statute authorizing school trustees to contract with teachers and approve their vouchers, providing that they shall not in any case create a deficiency debt against the district, or contract a salary in excess of the funds of the school district for the particular year in which their services are rendered, is invalid and hence a balance due on such contract is not collectible out of the funds of the succeeding year.

Collier vs. Peacock, Tex. 54, S. W. 1025; 55 S. W. 756.

It was held where orders against the treasurer, payable one year from date, were issued, that this was an attempt to pay out funds which necessarily cannot be in the hands of the treasurer until after the next tax levy. There is an anticipation of the revenues of the district for the ensuing year, and such is strictly prohibited by the statute.

Scott v. Board of School Directors, etc., Wis. 79, N. W. 239.

In Kane v. School Board, 52 Wis., page 505, the Court said:

“These provisions of the statute very clearly limit the power of the director and clerk of the school district to issue orders upon the treasurer of the district. In case where the money is due and immediately payable to the person in whose favor the order is issued, and where the funds for the payment of such debt have been apportioned to such district or have been voted by the district for the payment thereon, the inference to be drawn from these provisions of the statute is, that it was not the intention of the legislature to permit the clerk and director to issue any orders upon the treasurer to be paid out of the funds to be raised by any future action of the district. The officers are not authorized to issue orders in the nature of contracts payable in the future and chargeable upon taxes which might thereafter be voted by the district.”

Where a special tax is levied for a special purpose, and orders are issued thereon, the holders of such orders have an equitable lien on the funds obtained by such taxes, and where, in anticipation of the collection of certain revenues particular debts are incurred, such revenue is deemed to be impliedly pledged for the payment of such debts, and mandamus will not lie to compel it to be distributed to another fund which would be entitled to it had it not been so pledged.

35 Cyc. 1048.

I am, therefore, of the opinion that warrants issued prior to the July levy for which no funds were available at the time for their payment must await payment until such time as the district may approve the action of the board by a special levy to provide funds for their payment, and that taxes collected for the current year should be applied to warrants issued for current expenses for the year.

Respectfully,

S. C. FORD,

Attorney General.
