

Road Warrants—Issuance of for 1921 Expenditures Against 1922 Taxes—Claim Against County—Power of County Commissioners to Prefer One Claim to Another.

The Board of County Commissioners are vested with discretion in regard to incurring indebtedness for road purposes and issuing warrants therefor in anticipation of the collection of taxes levied for the current year.

It is the duty of the Board of County Commissioners to pass upon all claims presented at the session of the Board next after the claim is presented.

There is no statutory provision requiring one claim to be audited and passed upon prior to another.

James L. Hillier, Esq.,
Chairman Board of County Commissioners,
Salt Lake, Montana.

My dear Mr. Hillier:

You have submitted the following questions:

1. May road warrants legally be drawn against the taxes of 1922 for use in 1921?
2. Can a legitimate claim be held up in order to be a preferred claim ahead of it, so as to compel the first claim referred to to wait, and how long can a claim be held by the Board of County Commissioners before being passed upon?

In regard to your first question there is no statute specifically authorizing or forbidding the issuing of road warrants beyond the amount of the taxes levied for the current year. The County Commissioners are authorized by Chapter 15 of the Laws of 1919, amending Section 2894 of the Revised Codes, among other things, to lay out and maintain public highways, and by Subdivision 26 to borrow money to meet current expenses if the county revenue is insufficient.

A number of provisions of the statutes infer that indebtedness may be incurred by the County Commissioners on behalf of the county and that warrants may be issued therefor. Section 2989 provides for the registration of county warrants when there are insufficient funds to pay the same and that they shall bear interest after registration. Chapter 32 of the Laws of 1916, in authorizing the issuance of bonds by the county, provides that such bonds may be used to take up outstanding warrants, thus recognizing the right of counties to have a legal indebtedness represented by warrants. While the School Law limits the issuance of warrants by school districts to the amount of taxes actually levied, and provides that when issued for amounts beyond the amount in the treasury and against taxes levied they may be issued only for current expenses, there are no such provisions in the laws relating to county finances.

The Constitution limits the amount of indebtedness that a county can incur to three per cent of the value of the taxable property therein, and also limits the amount that may be expended for a single purpose to \$10,000 unless the question of the expenditure shall have been submitted to a vote of the people. It would seem, therefore, that the matter of incurring indebtedness for road purposes and issuing warrants therefor is within the discretion of the County Commissioners, subject only to the aforesaid constitutional limitation.

Referring to your second question, Chapter 15 of the Laws of 1919, Subdivision 12, defining the powers and duties of County Commissioners, provides as follows:

"At the regular meetings of the board to examine, settle and allow all accounts legally chargeable against the county, except salaries of officers, and order warrants to be drawn on the County Treasurer therefor, and provide for the issuing of the same."

Section 2946 of the Revised Codes of 1907 reads as follows:

"No account must be necessarily passed upon by the board, unless made out as prescribed in the preceding section and filed by the clerk prior to the session at which it is asked to be heard."

From these sections, while the duty is not directly enjoined upon the Board, it may be inferred that it is the duty of the Board to pass upon all claims presented at the session of the Board next after the claim is presented, and in the absence of some special circumstances requiring time for investigation, the Board should do so. However, in 15 Corpus Juris, page 654, it is stated that "considerable latitude is allowed as to the time of hearing and the obtaining of information in an informal manner" by the Board, which is for the purpose of ascertaining the correctness of a claim. Unless, however, there are circumstances justifying delay, the above rule would have no application, and the claims should be passed upon at the session next after presentation.

There is no statutory provision requiring one claim to be audited and passed upon prior to another, and while a fair and impartial administration would call for the consideration of claims in order of their presentation, there is no such statutory requirement.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.