

Warrants—Cities and Towns—Payment—Counties.

A city or county may not pay part of a warrant and issue a new warrant for the remainder. Neither may a new warrant be issued for an old one.

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State Examiner,
Helena, Montana.

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My dear Mr. Larson:

You have requested my opinion whether a county or municipality can pay a portion of a registered warrant and draw a new warrant for the remainder due, and also whether a new warrant may be issued in the place of an old one.

As to cities and towns the law provides for the registration of warrants and their payment in the order of registration. (Sections 5081 to 5083, inclusive, R. C. M. 1921.)

The same is true of counties. (Sections 4612, 4625, and 4752 to 4759, inclusive, R. C. M. 1921.)

The authorities are not in accord on the first question you have submitted. The supreme court of Washington had this question before it in the case of Potter vs. Black, 45 Pac. 787, and said:

“Appellants contend that the treasurer ‘is not compelled to pay, and need not make a call for, outstanding warrants which exceed the sum of \$500, unless he has sufficient money on hand to pay the face of the warrant, together with all interest thereon.’ This contention is based upon section 1 of the act of

March 21, 1895, relating to the payment of warrants. But we are disposed to agree with the claim of the respondent that this law is not applicable to warrants of the character of respondent's, which are drawn against a special fund, which fund cannot be devoted to any other purpose; and there is neither force nor reason which would require that this money, amounting to over \$600, should be retained in its treasury, to the credit of said fund, while there were warrants outstanding bearing a high rate of interest."

The same principle was before the court in the case of *United States vs. Macon County Court*, 75 Fed. 259. In that case it appeared that several warrants were registered on the same day. There was not sufficient money on hand to pay them all and the relator brought mandamus to compel the distribution of the available money among the respective warrant holders. The court held that the relator was entitled to the relief sought, saying:

"We think, upon these facts, the relator is entitled, as in the first place he prays, to an order on the treasurer to pay him his pro rata of the surplus in the treasury after paying the school-fund warrant. The defendants interpose two objections to this. They say, first, that orders are to be paid in the order of priority of registration, and that no warrant can be paid until it is surrendered to the treasurer. As these warrants were all registered at the same time, it follows that none could be paid until there was money enough in the treasury to pay all. This would compel the treasurer to retain these funds until they had accumulated to nearly, if not quite, \$200,000. This is absurd. Whenever any reasonable amount has accumulated, it should be distributed, and the order of the court is full protection to the officer."

It should be noted in passing that in that case the court remarked that the order of the court "is full protection to the officer."

In the case of *State ex rel. Scriber vs. Grant*, 49 Pac. 855, the supreme court of Oregon had the precise question before it. That action was also one in mandamus. The court held that a partial payment of a warrant was not authorized and denied the writ of mandamus.

I am disposed to agree with the conclusion reached by the supreme court of Oregon, and it is, therefore, my opinion that a county or city may not pay a portion of a warrant and issue a new warrant for the remainder.

In answer to your second question your attention is called to section 4626, R. C. M. 1921, which gives authority to issue a new warrant for one that has been lost or destroyed. This is the only statute that confers authority to issue a warrant in lieu of another, and under the rule of "expression unius est exclusio alterius," no authority exists to issue warrants in lieu of others under any other conditions than those named.

It is therefore, my opinion that a new warrant may not be issued to take up an old one, except under the conditions named in section 4626, R. C. M. 1921.

Very truly yours,

L. A. FOOT.

Attorney General.