

Board of Examiners—State Auditor—Claims—State—Warrants—Appropriations.

Whether or not a specific appropriation has been made, and if made whether it is exhausted, are questions of fact to be determined by the state auditor when drawing warrants for state claims, and must likewise be determined by the board of examiners in ascertaining whether approved claims should be sent to the auditor or to the legislative assembly.

Where the board of examiners sends to the auditor approved claims which should have been held and transmitted to the legislature because of the exhaustion of the appropriations, it is the duty of the auditor to return them to the board without drawing warrants therefor.

The auditor should not draw warrants for approved claims except where there is a specific appropriation therefor which is not exhausted.

It is the duty of the state auditor to follow the legislative direction where in making an appropriation from two or more funds the legislature had indicated which of the funds should be drawn upon first.

In the absence of legislative direction the board of examiners may designate which of the funds shall be drawn upon first.

Where two or more separate unexpended appropriations exist which are equally applicable to the payment of a claim in the absence of legislative direction the board of examiners may designate which shall be first drawn upon.

Where all funds out of which a particular appropriation is made are exhausted save one, it becomes the duty of the auditor to draw warrants upon the remaining unexhausted fund.

The state auditor may use his discretion as to which fund the warrant will be drawn upon in the instances stated in the opinion.

George P. Porter, Esq.,
State Auditor,
Helena, Montana.

December 29, 1924.

My dear Mr. Porter:

Your letters were received in which you inquire whether the state board of examiners has the authority to make a designation of the appropriation or fund account upon a claim approved by it out of which said claim should be paid, and if the state auditor is required to draw his warrant for said claim upon the appropriation or fund account so designated, even though the appropriation or fund account so designated is not the proper one against which said warrant should be drawn: or whether it is the duty of the auditor to draw his warrant against the proper appropriation or fund account even though another may be designated by the board upon the approved claim.

Section 238, R. C. M. 1921, requires any person having a claim against the state "for which an appropriation has been made," to present the same to the state board of examiners to be allowed or rejected by it.

Section 239 requires the board, if it approves the claim, to endorse thereon over the signatures of the board "Approved for the sum ofDollars." and to transmit the same to the office of the state auditor who must draw his warrant for the amount so approved in favor of the claimant or his assigns in the order in which it was approved.

Section 241 provides that if no appropriation has been made for payment of any claim presented to the board, or if the appropriation has been exhausted the board must audit the same and if it approves the same transmit it to the legislative assembly with a statement of its approval.

The above sections of the law, in my opinion, authorize the board only to approve or reject the claims presented. If the board approves them it must transmit them to the auditor, if there be an appropriation made for them and which is not exhausted. If no appropriation has been made or if one has been made but is exhausted, then to the legislative assembly. The only reason the board has to be concerned with the appropriations and their status is to determine to what place it will transmit the approved claim. In determining whether or not appropriation has been made the board can look to but one place, the acts of the

legislative assembly. If an appropriation has been made it follows as a matter of law that the claim must be paid out of it. No direction from the board to pay it out of that appropriation is necessary. If the board does designate the appropriation on the claim when it approves it, it must be the one made by law. If a wrong one is designated it does not authorize the auditor to draw his warrant on the wrong one as the designation made by law is the only proper one.

Section 151, R. C. M. 1921, provides:

"It is the duty of the state auditor: * * *

"7. To keep an account of all warrants drawn upon the treasurer, and a separate account under the head of each specific appropriation, showing at all times the unexpended balance of such appropriation. * * *

"9. To keep a register of warrants, showing the fund upon which they are drawn, the number, in whose favor, for what service, the appropriation applicable to the payment thereof, when the liability accrued, and a receipt from the person to whom the warrant is delivered. * * *

"17. To draw warrants on the state treasurer for the payment of moneys directed by law to be paid out of the treasury; but no warrant must be drawn unless authorized by law, and upon an unexhausted specific appropriation provided by law to meet the same. Every warrant must be drawn upon the fund out of which it is payable, and specify the service for which it was drawn, when the liability accrued, and the specific appropriation applicable to the payment thereof."

The above provisions of law place upon the auditor certain specific duties which are not placed by any law upon the state board of examiners, among which are the duties to keep an account under the head of each specific appropriation, showing the unexpended balance thereof; to issue warrants, but not to do so unless authorized *by law* and unless there is an unexpended appropriation *provided by law* to meet the same; to specify on the warrant the fund out of which it is payable, and the specific appropriation applicable to the payment thereof.

When the law enjoins upon an officer the performance of an unconditional duty and that duty is prescribed by the law itself, in the performance of it he must follow the law. The auditor must, therefore, before he issues a warrant determine whether or not a specific appropriation has been made by law authorizing the issuance of the warrant. He may only issue warrants when authorized by law, and the constitution and laws prohibit the drawing of warrants except in pursuance of a specific appropriation made by law, interest on the public debt excepted. To issue a warrant without such would be to do so without authority of law. If an appropriation is made he must then determine whether or not it has been expended. If so, he must not draw the warrant as that would be unlawful likewise.

It is also the duty of the board of examiners to determine these things before the claims reach the auditor and if the appropriation has not been made or if made has been expended, the claims should not reach the auditor, but be transmitted by the board to the legislative assembly. If, however, through error of the board, or for any other reason, claims are approved by it and sent to the auditor for the issuance of warrants and no specific appropriation has been made or if made has been expended, the auditor is without authority to draw the warrants as his authority is dependent upon the fact of the existence of an unexpended appropriation out of which they are payable and unless that fact exists the authority does not exist. Under such circumstances it is the duty of the auditor to send the claims back to the board that it may perform its duty of transmitting them to the legislative assembly.

If there exists an unexpended appropriation out of which the claims are payable the auditor must look to the acts of the legislative assembly and his records to determine the fact and to specify upon the warrant the specific appropriation out of which it shall be paid. When the warrant thus drawn is presented to the state treasurer it becomes his duty:

"To pay all warrants drawn by the state auditor out of the funds upon and in the order in which they are drawn."
(Sec. 174. R. C. M. 1921.)

It will thus be seen that the warrants drawn by the auditor are paid by the treasurer out of the fund designated on the warrant by the auditor at the time he issues his warrant. Should the auditor issue a warrant designating the wrong fund or appropriation it would be paid out of a fund not authorized by law, that is, the claim upon which the warrant was issued would be paid but not out of a specific appropriation made by law for the purpose, which is illegal.

Applying the above to conditions existing, as shown by your letters, the question of whether or not a specific appropriation has been made out of which the claims are payable, and if so whether or not there is an unexpended balance, is one of fact for you to determine before drawing the warrant. If there is no unexpended appropriation, then you should not draw the warrant. If there are sufficient funds in the unexpended appropriation applicable to the payment of the claim you should draw the warrant, bearing in mind, however, any provision in the appropriation acts, which are sometimes incorporated therein, that no warrants shall be drawn upon the general fund until the revolving and all other funds have been exhausted, as, for instance, is the case in house bill No. 7, laws of 1924, in which case, of course, the warrants must, as a matter of law, be first drawn against the revolving and other funds until they are exhausted, before they may be drawn against the general fund.

Should there arise a case where two or more separate specific appropriations have been made by the legislature (each of which is equally applicable to the payment of a particular claim and which are unexhausted), I am of the opinion that the board of examiners may, in the exercise of their administrative powers, designate which one of the

said two or more appropriations the claim shall be paid out of, but any designation so made must be of a specific appropriation made by law for the payment of said claim, and which is unexhausted.

The board would likewise have this power of designation when a specific appropriation is made out of two or more funds and no direction is made by the legislature as to which of said funds shall be first used for the payment of claims, but any fund so designated must be unexhausted, and the total claims must not exceed the amount of the appropriation from all the funds from which the specific appropriation is made. Where, however, all the funds out of which the specific appropriation has been made have become exhausted save one, it automatically becomes the duty of the auditor to draw his warrant upon the remaining unexhausted fund, provided the warrants already issued against all funds out of which the appropriation is made do not exceed in total the amount of the appropriation from all the funds.

In the absence of any direction by the board in the cases mentioned in the two preceding paragraphs, the auditor may use his discretion as to which appropriation or fund he will draw his warrant against, keeping in mind the limitations that the appropriation or fund must have been specifically made applicable to the payment of the claim and is not exhausted.

The appropriation in house bill No. 7 of \$40,000 for completion and equipment of receiving hospital, was from the general fund and the special funds designated therein, to-wit, the revolving fund and all other funds of the Montana State Hospital for the Insane. The total amount of the appropriation from all of said funds was the sum of \$40,000. If warrants have been drawn for claims arising out of the completion and equipment of the said receiving hospital against either the revolving or general fund, or both, in an amount sufficient to exhaust the appropriation, then no further warrants should be drawn for claims on account of the completion and equipment of the said receiving hospital, but the board of examiners, if they approve said claims, should transmit them to the legislative assembly.

The appropriation of \$54,000 made by house bill No. 389, laws of 1923 (Sec. 2), for the payment of salaries and expenses of the industrial accident board, specifically provides that the entire appropriation is made out of the industrial administrative fund if there is enough money in said fund; if not, the deficiency from the general fund. No warrants must be drawn upon claims for salaries and expenses of the industrial accident board after warrants have been drawn amounting to the sum of the appropriation. Until that total is reached, all warrants should be drawn against the industrial administrative fund so long as there are sufficient funds in that fund. When they have been exhausted the warrants may be drawn against the general fund until the total sum of \$54,000 has been exhausted. After the appropriation has been exhausted, any further claims should be transmitted to the legislative assembly after approval by the board.

Very truly yours,
L. A. FOOT,
Attorney General.