

**Cities and Towns—Levy—Taxes—Warrants—Funds.**

Cities and towns may issue warrants though there are no funds out of which they may be paid and though no tax levy has been made, providing the constitutional limitation of indebtedness is not exceeded.

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Assistant State Examiner,  
Helena, Montana.

October 4, 1927.

My dear Mr. Hawkins:

You have requested my opinion whether a city or town that has been recently incorporated, and which has made no tax levy in sufficient time to finance it for the coming year, may issue warrants for current expenses and register them.

By subdivision 63 of section 5039 R. C. M. 1921 a city is given authority to make any and all contracts necessary to carry into effect the powers granted by the other provisions of that section.

By subdivision 64 of the same section it is given authority to contract indebtedness on behalf of the city or town. By section 5079 R. C. M. 1921 a city or town is given specific authority to draw warrants, and by section 5081 R. C. M. 1921 it is clearly contemplated that a city or town may issue warrants though there are no funds out of which the same may be paid. This and the succeeding sections provide for the presentation of the warrants and for their registration in case there are no funds with which to pay them.

Hence, under our statute it is not a condition precedent to the right

of the city or town to issue warrants that there shall be funds available or funds in anticipation from which they may be paid. The general rule is that unless the power to issue warrants is limited to moneys in the treasury, warrants may be issued, even though there is no money in the treasury.

The general rule is stated in section 2242, McQuillin on Municipal Corporations, volume 5, as follows:

“So where there is no express provision limiting the power of municipalities to draw warrants only against appropriations to pay them or against money in the treasury, or that will come into the treasury within a year, a municipality may issue warrants although there is no money in the treasury to pay them and there will be none within a year; \* \* \*”

In support of the above text the case of *Little Rock vs. United States*, 103 Fed. 418 is cited. Other cases supporting this conclusion are: *New Orleans vs. Warner*, 180 U. S. 199, 45 L. Ed. 493; *Elingerland vs. Neward* (N. J.) 23 Atl. 129.

In the case of *Little Rock vs. United States*, supra, the court said:

“It is insisted, however, that the judgment directing the issue of the mandamus is erroneous, because the power of the city is limited to authority to issue warrants to pay which there is, or will be during the year succeeding their issue, money, in the city treasury, and the answer shows that there is not, and will not be, any such money in the treasury of the city of Little Rock. It is conceded that under the present system of administering the financial affairs of the city of Little Rock, as it is disclosed in the answer, there is not now, and there never will be, any money in the treasury of that city to pay the warrants directed to be issued to the relator, or to pay any of the other debts of that city, and that all the taxes which the city is authorized to levy, and all the revenue it can receive, are and will be needed and used to pay its current expenses. But the proposition that for this reason the city has no power to issue its warrants in payment of its just debts cannot be admitted.”

Hence, it is my opinion that a city or town may issue warrants, though it has no money in its treasury out of which they may be paid, and even though there is no tax levy made out of which revenue may be anticipated with which to pay the warrants. This power, of course, is limited to such an amount only as is not in excess of the constitutional limitation of indebtedness.

Very truly yours,

L. A. FOOT,  
Attorney General.