

**Counties—Claims—County Treasurer—Attaching Creditor
—Chattel Mortgages.**

Moneys paid by attaching creditor to the county treasurer for the benefit of a chattel mortgagee under Section 8283 R.C.M. 1921, are not county funds and are not required to be paid by warrants but may be paid by the county treasurer delivering the money in specie to the person entitled thereto or if the money has been deposited in a bank in a separate fund he may pay it by drawing his check against said fund. Such claim does not constitute a claim against the county and the allowance of the board is not a prerequisite to its payment.

Walter R. Knaack, Esq.,
County Attorney,
Shelby, Montana.

October 18, 1929.

My dear Mr. Knaack:

You have requested an opinion whether it is necessary for a claim to be filed with the board of county commissioners and the claim to be allowed before the county treasurer is authorized to pay moneys paid to him by an attaching creditor for the benefit of a chattel mortgagee under Section 8283 R.C.M. 1921, and if such payment must be by warrant.

Under the section above mentioned the money that is paid to the county treasurer is "payable to the order of the mortgagee." It is my opinion that this means that the money that is delivered to the county treasurer by the attaching creditor is to be held by the said treasurer and paid by him to the mortgagee or any person that the mortgagee authorizes to receive the money. The preceding section deals with the payment of a prior mortgage by a subsequent mortgagee, and it is there provided that the money may be deposited with the county clerk "subject to the order of the mortgagee, his legal representative or assigns," and it is my opinion that "payable to the order of the mortgagee" as used in Section 8283 means the same thing.

Section 4750 R.C.M. 1921, relating to the duties of the county treasurer, provides that he must receive all moneys belonging to the county, and all other moneys by law directed to be paid to him, safely keep the same, and apply and pay them out, rendering account thereof as required by law. The same section further provides that he may disburse the county moneys only on county warrants issued by the county clerk based on orders of the board of county commissioners or as otherwise provided by law. The moneys in question are not county moneys but are paid to the county treasurer or deposited with him to be held by him in trust for the benefit and use of the chattel mortgagee.

They should not be commingled with the county's funds but should be kept separate and apart therefrom. As they are not county funds,

they are not required to be paid by warrants but may be paid by the county treasurer, delivering the money in specie, to the person entitled thereto, or if the county treasurer has deposited them in a bank in a separate fund he may draw his check against said fund and deliver it to the person entitled to receive the moneys. The right of the chattel mortgagee to receive these moneys is in no sense a claim against the county. Then it is my opinion that no claim need be filed with the board of county commissioners and be approved by them as a condition precedent to their payment by the county treasurer to the persons entitled to receive them but that it is the duty of the treasurer to pay them out upon the demand of the person entitled thereto.

Very truly yours,

L. A. FOOT,
Attorney General.