

Registered Warrants—Warrants—Counties—Payment.

Warrants registered prior to July 1, 1931 cannot be restricted to the special fund mentioned in section 1 of chapter 159 of the laws of 1931 for payment unless that fund affords

a means for payment equal to the means provided by the funds upon which the warrants are drawn. Subsequent legislation cannot substitute a means of payment less adequate, certain and speedy than was provided for the payment of the warrants by law at the time of their issuance.

Mr. J. H. McAlear,
County Attorney,
Chester, Montana.

December 15, 1931.

My dear Mr. McAlear:

I have your request for an opinion in which you state that your county has outstanding and unpaid registered warrants drawn on the road, bridge and poor funds. At the July, 1931, meeting of the county commissioners they adopted a resolution providing for an extra levy under subdivision b of section 1 of chapter 159 of the laws of 1931 and directed the treasurer to set up a "debt reduction fund" as therein provided for the payment of these warrants. You inquire if it is the intent of the act to set aside the warrants registered prior to July 1, 1931, and retire them through this special fund, or whether the holders of such warrants can require payment to be made out of the levies made for the funds on which the warrants were drawn.

Said chapter 159 provides that any county having, at the close of the fiscal year ending June 30, 1931, a floating indebtedness consisting of valid and subsisting outstanding warrants drawn against any fund or funds and being without sufficient money in such fund or funds with which to pay the same, "and leave a balance or balances sufficient to meet the expenditures from such fund or funds necessary to be made therefrom during the fiscal year beginning July 1, 1931," may provide for the payment of such floating indebtedness, or so much thereof as is in excess of the money in such fund or funds available for the payment thereof by either issuing and selling bonds or by levying a special tax or taxes to pay the floating indebtedness with interest thereon. If a special tax or taxes are levied, the board may levy such an amount as would be sufficient to pay the whole of the floating indebtedness with interest during the fiscal year beginning July 1, 1931, or a levy may be made in that year sufficient to pay at least twenty per centum of the floating indebtedness with interest thereon in that year and a like levy may be made during each of the following years in an amount sufficient to pay at least twenty per centum of such floating indebtedness with interest thereon in each fiscal year, provided that the special taxes must be levied in such amounts as will be sufficient to pay the whole of such floating indebtedness with interest thereon before the first day of July, 1935.

The proceeds of the special tax are required to be deposited in a special fund to be designated "debt reduction fund," which must not be used for any purpose whatever except for payment of the principal and interest of such floating indebtedness incurred prior to and outstanding on July 1, 1931.

Apparently it was the purpose of this statute to permit the county

commissioners to segregate the floating warrant indebtedness existing as of July 1, 1931, and to make provision for the payment thereof by the levy of special taxes for that purpose, leaving the regular levies made for the funds on which such warrants were drawn available for the purpose of paying warrants drawn during such year for and on account of current necessary expenditures.

Prior to the enactment of this statute warrants issued against the various funds were required to be registered if there was not sufficient money in the funds with which to pay them, and all warrants were payable in the order of their registration and the moneys received to the credit of such funds were required to be applied to the payment of the outstanding registered warrants which had previously been ascertained and provided for in the budget, and they would not be used for the payment of subsequently issued warrants so long as prior registered warrants were outstanding and had not been paid. Under said chapter 159, laws of 1931, the moneys coming into the funds on which these registered warrants were drawn would not be required to be applied to the payment of the registered warrants but the said moneys would be used for the payment of warrants subsequently issued for current expenditures, leaving the warrant holders to look to the debt reduction fund for the payment of their registered warrants.

The law providing for the registration and payment of warrants existing at the time of the issuance of the warrants is a part of the contract with the holders of the warrants and no subsequent law may impair the rights which they acquired under the existing law with reference to the payments of their warrants. As was said in *Phillips vs. Reed*, 109 Iowa, 188, 80 N. W. 347:

“The effect of the requirement that warrants shall be paid in the order of their presentation is to create a contract for precedence with the bond holders, which could not be impaired by subsequent legislation.”

To the same effect is the case of *Eidemiller vs. City of Tacoma*, et al., 14 Wash. 376, 44 Pac. 877.

Dillon on Municipal Corporations, 5th Ed., sec. 859, says:

“It is within the power of the legislature to prescribe the order of payment of warrants, e. g., that they be paid in the order of issuance of the order of presentation and registration; and a statutory provision which is in force at the time when warrants are issued, that they shall be paid in a prescribed manner—e. g., the order of presentation and registration—creates a contract for precedence with the warrant holder which cannot be impaired by subsequent legislation.”

In the case of *E. H. Rollins & Sons vs. Board of Commissioners of Grand County*, decided by the Circuit Court of Appeals of the Eighth Circuit and reported in volume 199 of the Federal Reporter at page 71, the court says:

“It is settled by authority that where the law, at the time of the issuance of a warrant, provides for its payment in the order

of its presentation this becomes a part of the contract, and cannot be altered or changed, at least without an equally safe, certain, and speedy provision for payment. Such a proposition would not seem to require authorities to sustain it. Usually warrants purport to be for immediate payment, but where the county or city is in an embarrassed condition such payment cannot be made; and when the legislature provides they shall be paid in the order of the presentation and registration this is equivalent to inserting in each warrant, 'Payable at any time when the cash in the fund is sufficient to pay this and all previously presented and registered warrants,' and in law fixes the date of payment. When, therefore, the legislature sees fit, definitely or indefinitely, to change the date of maturity, it impairs the obligation of the contract, and that it cannot do consistently with the provision of the Constitution of the United States."

Our own supreme court in the case of *State ex rel. Board of County Commissioners vs. District Court*, 62 Mont. 275, 204 Pac. 600, citing some of the above authorities, states:

"The warrants registered prior to July 1st were a direct charge upon the entire poor fund. They had been issued and registered under the statutes then in force and it would not have been competent for the legislature to give preference to other claims over them."

You do not state whether your county commissioners made a special levy for the debt reduction fund sufficient to discharge all of the registered warrants during the fiscal year beginning July 1, 1931, or whether they only made a levy sufficient to discharge a part of the registered warrants, leaving the rest to be discharged from special levies to be made in subsequent years. Of course, if a levy was made for the debt reduction fund sufficient to discharge all of the registered warrants during said year the warrant holder would have no complaint as the payment of his warrants would not in any wise have been adversely affected. The only difference in such a case would be that his warrants would be paid out of a fund other than the funds on which they were drawn but this would not constitute a substantial violation of his contract rights, an equally safe, certain and speedy provision having been made for their payment out of the debt reduction fund.

However, if a levy was made which is sufficient only to pay during the year a part of the registered warrants with interest a complicated situation is presented. A part of the registered warrants drawn against several funds is then to be paid out of a single fund—the debt reduction fund. Nothing is said in the statute about the order in which the warrants drawn on the several funds would be called for payment out of the single fund or how much of the single fund could be used to pay any one class of warrants payable out of it.

It is certain that all of the fund could not be used to pay warrants drawn on the poor fund to the exclusion of the warrants drawn on the road and bridge fund or vice versa, as plainly this would amount to no provision being made at all for the payment of the excluded warrants which would be unquestionably a violation of the legal rights of the

holders of those warrants. It might be that a system of bookkeeping could be adopted by which the debt reduction fund could be equally apportioned between all the classes of warrants for which it was raised so that each class would receive its share of the fund and thus surmount this difficulty. It would, of course, be necessary to call the warrants of each class for payment in the order of their registration.

But there are other obstacles presented when a special levy is made that is sufficient to retire during the year only a part of the registered warrants leaving the rest to be paid from special levies to be made in subsequent years. The holders of warrants drawn on a particular fund, as, for instance, the road fund, cannot be required to relinquish their right to look to that fund for payment unless the debt reduction fund provides equal means for payment of the warrants. These holders are entitled to have a levy made for the road fund sufficient to pay their warrants unless the amount required for that purpose would require a levy in excess of the maximum levy permitted by law to be made for that fund, in which event they are entitled to have the maximum levy made.

If, under the installment plan of paying these registered warrants, the special levy produces funds sufficient to discharge registered warrants drawn on the road fund in an amount equal to what could be discharged by the maximum levy permitted by law to be made for the road fund then the warrant holders would have no cause for complaint because if the warrants were paid out of the road fund there would be only sufficient funds to redeem the amount specified in the installment for which the special levy was made and the debt reduction fund would afford an equal means of payment during the year. If, however, that part of the moneys raised by the special levy for the debt reduction fund, which is applicable to the payment of these registered road warrants, is less than would be produced by the maximum levy permitted by law to be made for the road fund and the amount of the outstanding warrants against that fund is greater than the funds which would be produced by such a levy it is clear that the contract rights of the warrant holders would be prejudicially affected if they are required to look only to the debt reduction fund for the payment of their warrants. This would violate rights granted to them by the constitution.

Therefore, it must be held that in such a case they may also look to the road fund for payment of their warrants to the extent that it is necessary to supplement that part of the debt reduction fund which is applicable to the payment of those warrants in order to provide the full amount for the payment of those warrants which would be available therefor out of the road fund if chapter 159 had not been enacted and the debt reduction fund not created. The excess moneys, if any, derived from the levy for the road fund may be used to pay warrants issued for current expenses. What has been said above concerning the road fund and registered warrants outstanding against the same applies equally to all other funds and registered warrants outstanding against the same similarly affected by the provisions of said chapter 159.

Very truly yours,

L. A. FOOT,

Attorney General.