

Municipal Water Plants—Budget Act.

The budget act, chapter 121, laws 1931, applies to expenditures for municipal water plant even though it is not necessary to resort to taxation as no distinction can be made between cases where taxation is necessary and those where it is not. A contract entered into by a city becomes "a mandatory expenditure required by law," and therefore within the emergency class.

Mr. R. N. Hawkins,
Assistant State Examiner,
Helena, Montana.

November 16, 1932.

My dear Mr. Hawkins:

You have requested an opinion of this office as to whether municipal water plants are within the purview of the municipal budget law (Chapter 121 of the 1931 Session Laws).

Your particular question is:

"If municipal water plants must comply with the budget act, and after the budget was fixed for the fiscal year the Council finds that the estimated expenditures for construction are inadequate, would the provisions of Section 8, paragraph 1, chapter 121 of the 1931 Session Laws, govern, or Section 8, paragraph 2 in regard to emergency appropriation?"

Section 3 of chapter 121 provides that,

“On or before the first day of July of each year the clerk of each city shall notify in writing each official, elective or appointive, in charge of an office, department, service or institution of the municipality to file with such clerk, on or before the tenth day of July following, detailed and itemized estimates, both of the probable revenues from sources other than taxation, and of all expenditures required by such office, department, service or institution for the current fiscal year.”

It appears that on July 1st the city of Great Falls in preparing its budget inserted a figure of \$22,000 as the estimated expenditure for new construction in connection with its water plant. In making this estimate, it failed to obtain estimates from the city engineer as to the amounts due contractors. As a result, the situation as it now stands is that warrants have been issued in connection with defraying the cost of this construction to the extent of \$19,910.27 against this appropriation, leaving an unexpended balance thereof in no greater sum than \$3,089.73.

Recently, the city clerk was apprised of these estimates to contractors and it is now apparent that the same amount to the additional sum of \$15,098.74; and if the same were now paid, the budget deficiency would amount to more than \$12,009.01 after applying said unexpended balance.

Mr. Warren Toole, city attorney at Great Falls, has submitted his opinion to the effect that the expenditures in respect to the water plant are not within the purview of the municipal budget law for the reason that no specific provisions are made therein for any item of appropriation to be used in the operation of a public utility. It appears, however, from the statement that the city of Great Falls did estimate the amount of expenditures necessary in connection with its water plant, but overlooked the fact that certain obligations had been incurred for which the city presumably was liable under contract.

In my opinion, the provisions of the budget law while not expressly including water plants are sufficiently broad to permit the presumption that the legislature intended to cover such expenditures. This is apparent from the provisions of paragraph two of section eight in regard to emergencies, the particular language being that,

“Upon the happening of any emergency caused by fire, flood, explosion, storm, earthquake, epidemic, riot, or insurrection, or for the immediate preservation of order or of public health, or for the restoration of a condition of usefulness of any public property the usefulness of which has been destroyed by accident, or for the relief of a stricken community overtaken by calamity, or in settlement of approved claims for personal injuries or property damages, exclusive of claims arising from the operation of any public utility owned by the municipality * * *”

Mr. Toole in his opinion states that where a city operates a water plant without resort to indebtedness beyond the three per cent constitutional limit, it stands on an equal footing with an individual or private corporation engaged in furnishing water to its inhabitants, and where ample provision has been made for retiring bonds issued in connection

with its water plant and the city has accumulated a surplus over and above the amount necessary to discharge the interest on the indebtedness as it becomes due, it could properly expend such surplus.

Where a city has installed a water plant it is, of course, required, where it exceeded the three per cent limitation, to devote the revenue derived therefrom to the payment of the debt created for the construction or improvement of the plant. It may not resort to general taxation except where the amount derived is not sufficient to pay the indebtedness. The receipts from the water plant, however, must first be devoted to the necessary operating expenses of the plant and may not be used for general city purposes, thus placing an additional burden upon the water users for municipal water furnished them.

It is not intended in this case to use the revenue from the water department for any other purpose than to pay for improvements made to that department. The fact that it is not necessary to resort to taxation in this case does not, in my opinion, affect the general provisions of the budget act, which were no doubt intended to cover all cases where the municipalities operate water plants, regardless of the necessity or non-necessity for resorting to taxation.

I am unable to see where the budget act can be construed as not applying to a case where the revenues from the water department are sufficient to carry on its operating expenses and make additional improvements without taxation and to be held to apply only to a case where taxation must be resorted to. I am, therefore, of the opinion that the budget act was intended to cover all expenditures made by the city by reason of the operation of its water department where the municipality owns its water plant. The question then is whether this additional expenditure over and above the amount appropriated in the budget constitutes an emergency.

Section 8 provides that,

“In a public emergency, other than such as are hereinafter specifically described, and which could not reasonably have been foreseen at the time of making the budget, the council, by unanimous vote of the members present * * * shall adopt and enter upon their minutes a resolution stating the facts constituting the emergency and the estimated amount of money required to meet such emergency, * * *”

It is clear that the payments required to be made in this case could have been reasonably foreseen. In fact it appears that contracts were let and obligations incurred for which the city was liable irrespective of the provisions of its budget.

The only provision in the emergency clause which, in my opinion, could be made to apply to the situation is the provision “or to meet mandatory expenditures required by law.” The contract existing at the time the budget was made up carried with it a legal liability to pay the consideration, and therefore the payment of such consideration is

a mandatory expenditure required by law. It is therefore my opinion that an emergency could be declared and warrants issued to meet these mandatory expenses required by law.

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