

Opinion No. 289

**County Clerks—Warrants—Claims—
Budget—County Commissioners.**

HELD: The County Clerk must issue warrants for all claims, legal on their face, approved and allowed by the board, unless such claims exceed the budget.

July 6, 1933.

You request an opinion on the following questions: 1. Must the county

clerk issue warrants, approved and authorized by the board of commissioners against a fund which is nearly exhausted, when issuance of the same might or should cause the fund to be overdrawn? 2. Must the county clerk issue a warrant which he knows will cause a fund to be overdrawn, or is illegal, if approved and authorized by the board of county commissioners? 3. If the county clerk must issue the warrants for claims approved by the board of commissioners, if the same causes a fund to be overdrawn, then to what extent is he liable?

As your three questions all relate to the duties of the clerk and recorder in his relation to the county board, our opinion will cover the whole without considering each separately.

In the case of *State ex rel. Lockwood v. Tyler*, 64 Mont. 124, the clerk and recorder's duties and his relation to the board are discussed at length and it is made very clear that the clerk has no discretion in the matter of issuing warrants when ordered to do so by the board, but since that decision was rendered the legislature has enacted Chapter 148, Laws of 1929.

Under the Act of 1929, Section 5, last paragraph, the members of the board and the clerk are liable personally on their bonds for approving any claim or issuing any warrant, respectively, in excess of the budget.

Your questions merely refer to issuing warrants overdrawing a fund and you do not refer to warrants issued in excess of the budget. Warrants are frequently issued overdrawing a fund and are registered for lack of funds and no liability is incurred. But if a claim in excess of the budget is allowed and approved by the board and a warrant for the claim so allowed is issued by the clerk then the members of the board and the clerk all become liable to the county for four-fold the amount of such claim or warrant. Chapter 148, Laws of 1929, makes it obligatory upon the clerk to refuse to issue a warrant for any claim or claims approved and allowed by the board in excess of the budget. The clerk must refuse in such cases in order to protect himself from the penalty imposed by the statute.

Our opinion is that the clerk must issue warrants for all claims, legal on their face, approved and allowed by

the board, unless such claims exceed the budget. If they exceed the budget, the clerk must refuse to issue the warrant. Whether the claims overdraw the particular fund or not is immaterial, except when the claims are in excess of the budget.