

Opinion No. 94**Cities and Towns—Warrants—Budget
Law—Revenues.**

HELD: Warrants of a municipality issued in excess of actual receipts but within estimated receipts even though issued after it is apparent that actual receipts will fall short of the estimated receipts, are not by reason thereof illegally issued.

February 24, 1933.

You have submitted to this office the following questions:

“Pursuant to Chapter 121 of the Session Laws of 1931, the council prepared its budget and set forth ‘the estimated receipts from all sources.’ It is now found that in a number of instances ‘the estimated’ receipts are too high and that the amounts so ‘estimated’ will not be collected or realized.

"1. Hence, the question which has arisen is this: May warrants be legally drawn on such funds so budgeted up to the full amount set forth in the budget notwithstanding the fact that 'the estimated receipts' will not be collected and notwithstanding the fact that the actual receipts are and will be much less than the estimated receipts and much less than the amount set forth in the budget?"

"2. Assuming that, in making up the budget, the council included in 'the estimated receipts from all sources' monies estimated to be collected from police court fines, from licenses, from dog taxes, or any one of them, and assuming that the amounts actually received and collected or which will be actually received and collected from such police court fines or licenses or dog taxes, is much less for the year than the amounts estimated at the time of the preparation of the budget, would these facts or conditions affect the legality of warrants drawn on such fund, assuming that the budgeted amount is considerably in excess of the actual receipts from such sources and from such funds?"

As a matter of law I do not think there is any difference between the answer to your question 1 and your question 2. In question 1, you have detailed the sources from which estimated revenue was calculated. The question presented is whether or not warrants drawn within the budget as fixed and finally determined by the council, are legally issued even though the estimated revenues from all sources are not sufficient to pay the warrants.

The tabulation of expenditures and sources of revenue, provided for in Section 4 of Chapter 121, Laws of 1931, is submitted by the clerk to the council; whereupon, the council is required to consider the same in detail and before the 25th day of July, make any revisions, reductions, additions or changes that they may deem advisable, and as changed and approved they constitute the preliminary budget for the fiscal year. A public hearing is then advertised and held and upon the conclusion the council shall fix and determine each item of the budget separately and shall by resolution adopt the budget

as so finally determined and enter the same in detail in the official minutes of the council.

The budget as finally adopted shall specify the fund or funds against which warrants may be issued for the expenditures so authorized, respectively, and the aggregate of all expenditures authorized against any fund **shall not exceed the estimated revenues to accrue** to such fund during the current fiscal year from all sources including taxation.

The budget act is very definite and specific as to the total amount of expenditures that can be made. Warrants cannot be issued in excess of the estimated revenues. It is not, however, clear that no warrants shall be issued where it is apparent to the council that their actual receipts are going to fall short of their estimated receipts.

Under Section 9, the clerk is required to submit a report to the council of expenditures of each separate appropriation incurred during the preceding calendar month and also to set forth the receipts from taxes and in detail the receipts from all other sources by each fund for the same period. The council is thus kept advised from month to month of actual receipts from all sources.

The budget acts for counties, cities and school districts are new with us. They have in fact received few constructions by the courts. Officers have found that budgets are very definite limits on expenditures and that emergencies cannot be declared merely for the purpose of exceeding limitations.

Officers have not been slow in steering a course around this limitation on expenditures. The course taken is to liberally estimate expenditures for any department or agency in fixing the budget. How far may the council go in excess of reasonably to be expected receipts in fixing budget estimates? May the council continue to issue warrants after collections from fines and licenses demonstrate conclusively that estimated receipts will not be realized in the current year?

The fixing of the budget is a legislative act. Insofar as the estimated income is to be derived from tax levies which become a lien on property, the presumption is that the tax will ulti-

mately be collected by sale of the property. No lack of good faith can be charged to the council in issuing warrants up to the full amount of the estimated receipts in such cases even though a considerable portion of the tax can never be collected. But there is no such presumption (of ultimate collection) in favor of warrants issued against items estimated on receipts from fines not imposed, or, if imposed, not paid, or as to licenses not taken out or not renewed when business becomes unprofitable or is discontinued.

In conclusion, it is my opinion that warrants issued in excess of actual receipts, but within estimated receipts even though issued after it is apparent that actual receipts will fall short of estimated receipts, are not by reason thereof illegally issued.