

above mentioned levy will return approximately \$71,134.00 * * *.

"The entire county poor budget as of the first of March, 1935, had approximately \$4,500.00 remaining. The above agencies have been collectively costing the county on an average of over \$9,000.00 per month, therefore the cost of maintaining said agencies for the balance of the fiscal year will be approximately the sum of \$30,000.00.

"The county commissioners maintain that it is mandatory upon the county to care for the poor through the above mentioned agencies and have asked me to write your office for an opinion in regard to the following matter.

"Is it possible for the county commissioners to incur the sufficient emergency warrant indebtedness to cover the sum needed for this purpose?"

Section 6, Chapter 148, Laws of 1929, provides for emergency expenditures by the issuance of emergency warrants drawn against the fund or funds properly chargeable with such expenditures. The facts and the procedure authorizing such emergency expenditures are set out therein. It is provided in the third paragraph of this section that if there shall not be sufficient money available in the fund chargeable with such expenditures, such warrants may be registered and draw interest in the manner provided for other county warrants. Paragraph 4 provides: "* * * the county commissioners shall include in their tax levies a levy for each fund sufficient to raise an amount equal to the total amount of such warrants, if there be any, remaining unpaid at the close of such preceding fiscal year because of insufficient money in such fund to pay the same; provided, however, that no levy shall be made for any fund in excess of the levy authorized by law to be made therefor; and provided further, that the board of county commissioners may submit the question of funding such emergency warrants at an election, as provided by law, and if at any such election the issuing of such funding bonds be authorized it shall not then be necessary for any levy to be made for the purpose of paying such emergency warrants."

Opinion No. 64.

County Commissioners—Poor— Budget—Poor Fund.

HELD: While it is the duty of the county commissioners to take care of the poor, they are limited in their expenditures for that purpose to the funds which may be available from the maximum six mill levy and the \$2.00 per capita tax as authorized by Section 4465, as amended; provided, however, that in an emergency they may issue warrants as authorized by Section 6 of Chapter 148, Laws of 1929, although such warrants may be in excess of the budget which may be based upon the maximum levy.

March 22, 1935.

Mr. George F. Higgins
County Attorney
Missoula, Montana

You have submitted the following:

"The county commissioners of Missoula County, in creating the county budget for the fiscal year 1934-35, made a levy of six (6) mills for the care of the county poor in accordance with Section 4465, Revised Codes of Montana, 1921, as finally amended by Chapter 100, Laws of 1931, Subdivision 5. * * * The

Section 4631, R. C. M. 1921, provides: "The board is authorized to transfer all surplus moneys that may be on hand in any of the several county funds, except the school fund, to such fund or funds as they may deem for the best interest of the county, or to appropriate said surplus moneys to the payment of the outstanding indebtedness of the county; but no moneys belonging to the school fund must be taken therefrom except for school purposes."

This office, in an opinion given by Attorney General Foot, Volume 13, Opinions of the Attorney General, page 257, held that Section 4631, supra, was not repealed by the budget act, Chapter 148, supra. With this opinion we are inclined to agree.

It is my opinion that while it is the duty of the county commissioners to take care of the poor, they are limited in their expenditures for that purpose to the funds which may be available from the maximum six mill levy and the \$2.00 per capita tax as authorized by said Section 4465, as amended; provided, however, in an emergency they may issue warrants as authorized by Section 6, Chapter 148, supra, although such warrants may be in excess of the budget, which may be based upon the maximum levy. These warrants may be paid (1) by a levy the following year, provided it is not in excess of the levy authorized by law to be made therefor; or, (2) by funding bonds as provided by said Section 6 above quoted; or (3) by transfer of funds, if there is a surplus in any of the other county funds, as provided by Section 4631, R. C. M. 1921.