

Opinion No. 194.**Water Conservation Board—Appropriation—Overdraft.**

HELD: The State Water Conservation Board may, in case of an emergency, temporarily overdraw its account, if such overdraft does not exceed the funds which will be available from appropriations and other income, before the close of the fiscal year.

November 13, 1937.

Hon. John J. Holmes
State Auditor
Helena, Montana

Dear Mr. Holmes:

I have been requested by the State Water Conservation Board to write you relative to the right of the State Water Conservation Board to overdraw the conservation revolving fund of such Board under certain conditions.

The particular situation which has been submitted to me for an opinion is this: A large amount of such conservation revolving fund is retained by the Federal Government temporarily and will undoubtedly be returned to

such fund in the near future. This Board is engaged in the construction of certain irrigation projects of the greatest economic value to the State of Montana, and in pursuance of the program authorized by the Legislature of this State. The Board has depleted its available funds and unless it can temporarily overdraw such fund, one or more of such projects must be closed down and great and irreparable injury to the State may accrue.

The conservation revolving fund of the State Water Conservation Board was authorized by Sections 349.63-349.65, R. C. M. By the terms of this Act the conservation revolving fund includes monies appropriated by the Legislature and also monies repaid to the Board or monies from any other source.

House Bill No. 369, pages 686-690, 1937 Session Laws, contains the biennial appropriation for the State Water Conservation Board. Each year twenty per cent of the Liquor Control Act to the extent of \$300,000.00 is appropriated. In addition thereto there is appropriated all monies remaining in the fund on March 1, 1937, and all monies paid or repaid to the Board from any source not expressly appropriated to some other fund.

Section 12 of Article XII of the Constitution of Montana provides:

"No appropriation shall be made nor any expenditures authorized by the Legislative Assembly whereby the expenditures of the State during any fiscal year shall exceed the total tax then provided for by law, and applicable to such appropriation or expenditure unless the Legislative Assembly making such appropriation shall provide for levying such sufficient tax not exceeding appropriations or expenditures within such fiscal year."

The Supreme Court of this State has held in the case of *State ex rel. Tipton versus Erickson*, 93 Montana 466, that this provision of the Constitution does not prevent the issuance of warrants upon the general fund where same are within the anticipated annual income of the State. Therefore, it may be said that this Constitutional provision does not absolutely prohibit the issuance of warrants under such conditions.

Chapter 40 of the Laws of 1937, in its title, provides in part as follows:

"An Act to prohibit any * * * department maintained in whole or in part by the State from expending or contracting to expend any amount in excess of the annual income from legislative appropriation and other authorized sources * * *."

Therefore, if an overdraft does not exceed the funds which will be available before the close of the year, it would not seem to be prohibited by the statute last cited.

I have also examined Article V, Section 34, of the Constitution, and R. C. M. 1935, in relation to the issuance of warrants, and Section 180, in relation to the registry of State warrants, and I do not find that a warrant under the conditions mentioned is prohibited by the Constitutional or Statutory provisions.

I am therefore of the opinion that under the conditions mentioned in this opinion, the State Water Conservation Board may temporarily overdraw its account, and you would be justified in issuing warrants provided, however, that the Board is not authorized to exceed in any one year its annual appropriation and income.