

Opinion No. 203.

Public Welfare—County Commissioners—Poor Fund—Expenditures, Method of.

HELD: Poor funds of county whether for purposes of Welfare Act, or otherwise, must be expended by county commissioners upon claim and warrant.

2. There is no authority of law permitting the county commissioners to establish a revolving imprest fund in a bank and draw against such funds by check for payments of relief claims.

December 2, 1937.

Mr. W. A. Brown
State Examiner
The Capitol

My dear Mr. Brown:

You have submitted to this office the following inquiry, which was submitted to your office by the Board of County Commissioners of Yellowstone County:

“The present method of handling the county relief claims for payment by the county is proving too cumbersome and inefficient, as well as causing delays in the matter of paying these cases. The district supervisor for the Montana Welfare Department, together with local relief officials, the county commissioners, and county clerk and auditor have endeavored to devise some means of

eliminating the delays caused by the present system of handling from 300 to 500 claims each month, and wish to submit a proposal for changing of such method in order to expedite the work in the various offices.

"Accordingly, we have arrived at a plan wherein the Yellowstone County Board of Public Welfare will submit a claim for \$5000 to the county to be paid from the poor fund. As each of the three banks in the city is covered with Federal Deposit Insurance, the Welfare Board's deposit would be safeguarded. The money is then to be paid out on checks as per enclosed sample, and each day, if some twenty or thirty persons apply at the relief office for funds, their names are listed on one claim, similar to the matter of handling the regular Yellowstone County payroll.

"This one claim is then handled in the usual way, and the receipt which each individual payee signs (copy of which is hereby submitted), is then attached to the claim and filed with the County Auditor. The recipient of the payment presents his check for payment to the bank designated and the account is then subject to verification at any time your office makes an examination.

"The checks being signed as county warrants are at present, and the claim being duly audited and agreeing in the total sum of the checks issued, there should be no reason why any difficulty would be encountered in reconciling the claims with the amount of money deposited and paid out.

"This method would eliminate a great deal of work in the auditor's, county clerk's and county commissioners' office and will enable us to get the checks out the same day that the claim is received, and the method of payment meets the approval of all three of the Billings banks, each of which agrees to handle, without cost, for a period of four months each, the account of the Public Welfare Board."

Whatever power the board of county commissioners may have, if any, in relation to the above matter must be found in the statutes, expressed or implied, and it is fundamental that if no such power is found, none exists.

If the performance of duties by officers is expressly provided for, no other or further powers are implied. In re Farrell, 36 Mont. 255.

Paragraph (b), Section XI, Part I, Chapter 82, of the 1937 Session Laws, and so much thereof as applies, provides:

"It is hereby made the duty of the board of county commissioners in each county to levy the six mills required by law for the poor fund and to budget and expend so much of the funds in the county poor fund for all purposes of this act as will enable the county welfare department to meet its proportionate share of such assistance granted in the county, and the county budget shall make provision therefor and an account shall be established for such purpose. * * *

Section 4605 provides for the itemization and verification of all claims presented to the board; Section 4610 provides for the procedure upon allowance, or disallowance of a claim, whereby every claimant or taxpayer may appeal; Section 4612 provides for the procedure for the presentation and payment of a claim; Section 4613 provides for the examination of warrants by the board; Section 4830 provides for auditing and investigation of claims, and Section 4831 provides for the listing of claims. These sections expressly provide for the disbursement of public funds by the county, which include the poor fund, by claim and warrant, in a well identified and orderly manner.

Section 4750 makes the county treasurer the depository of all county funds, including the poor fund, and Section 4760 provides and specifies the manner in which the county treasurer shall make his settlement. Section 4767 provides the manner in which the county treasurer shall deposit the county funds.

Chapter 82, supra, makes it the duty of the county commissioners to expend the poor fund for the purposes provided for by law. Nowhere in Chapter 82, has the expressed provisions, supra, regarding the disbursement of public money by the county been modified or repealed. If the Board of County Commissioners were allowed to disburse said funds as aforesaid, it would

be in violation of the law enjoining that duty upon the county treasurer. If the board were allowed to dispense said funds as aforesaid, the same would constitute a withdrawal from the county treasury without authority, and the establishment of an imprest and quasi-revolving fund, and the county treasurer's account would be prematurely decreased and depleted to the extent of the amount removed therefrom, and at the time the money was withdrawn from the treasurer's office, from an auditing standpoint, it would have been expended although claims were neither due nor payable.

This office has heretofore ruled that the state treasury shall be the depository of all state funds of the State Department of Public Welfare, with the exception of an imprest fund which the administrator of the State Public Welfare Department may deposit in banks. Provision for the establishment of this imprest fund is found in Part VIII of Chapter 82, *supra*. The county proposes to establish what in principle is an imprest fund similar to that imprest fund established for the state department. The legislature expressly provided for the establishment of such a fund by the state department, and for a procedure by the state department somewhat similar in principle to the procedure as proposed in your plan. The legislature omitted to provide for a parallel system of procedure for the counties, and the county department of public welfare, and under the familiar rule of statutory interpretation we cannot insert what the legislature has omitted, nor omit what the legislature has inserted.

Inasmuch as the legislature has expressly provided the method of dispensing the funds of your county, which provision excludes the disbursement of these funds in the manner you have proposed, it is our opinion that your proposed plan cannot be adopted. We are not venturing an opinion upon the merits of the proposal, as that is a matter which must be addressed to future legislatures, if the same is to be adopted.