

**Opinion No. 218.**

**State Auditor — Funds — Unexhausted  
Funds.**

HELD: The State Auditor may draw warrants only upon unexhausted funds, under the provisions of Section 151, subsection 17, R. C. M., 1935.

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December 27, 1937.

Honorable John J. Holmes  
State Auditor and Ex-Officio  
Insurance Commissioner  
State Capitol Building  
Helena, Montana

My dear Mr. Holmes:

You have asked if the State Auditor may legally draw his warrant paying

a claim on a Federal Trust fund in excess of the balance in said fund.

The duties of the State Auditor are prescribed by Section 151 of the Revised Codes of Montana, 1935, subdivision 17 of which says:

“To draw warrants on the state treasurer for the payment of moneys directed by law to be paid out of the treasury; but no warrant must be drawn unless authorized by law, and upon an unexhausted specific appropriation provided by law to meet the same. Every warrant must be drawn upon the fund out of which it is payable, and specify the service for which it is drawn, when the liability accrued, and the specific appropriation applicable to the payment thereof.”

This section was taken from Section 433 of the California Political Code and the Supreme Court of California, in construing subdivision 17, has said that “appropriation” as used therein is synonymous with “fund.” *Proll v. Dunn*, 22 Pac. 143.

Then the State Auditor can only draw upon an unexhausted fund and inasmuch as the payment of the claim you mention would more than exhaust the fund a warrant cannot be legally drawn until the income builds the fund up to a point where it is equal to the claim. Until such time claims must be filed as prescribed by Section 154 of the Revised Codes of Montana, 1935.