

Opinion No. 262.

**Water Conservation Board—
Expenditures.**

HELD: When obligations are incurred, or warrants issued within the reasonably expected income, or within the appropriation, same are valid, although payment not made until after expiration of appropriation period.

March 24, 1938.

State Water Conservation Board
State Capitol Building
Helena, Montana

Gentlemen:

You have submitted to this office the following questions:

“(1) Where the State Water Conservation Board has incurred obligations during a given fiscal year, which obligations are based upon the fact that it has reasonable ground to believe that monies will be returned from the Federal Government during said year and to meet such obligations during the current year, and such re-

payments do not take place in said year, warrants not having been issued for such obligations during such year, and warrants thereafter issued for same on the Conservation Revolving Fund, is the incurring of such obligations a violation of Chapter 40, Laws of 1937?

(2) If expenses slightly in excess of the year's annual income are incurred, which are charged against the Administration Fund of such Board and there are monies which may be returned from the Conservation Revolving Fund to the Administration Fund, will such transfer be permitted, and will the incurring of these obligations be a violation of the same chapter?"

This law makes it unlawful for any Board "to expend, contract for the expenditure, or incur or permit the incurring of any obligation whatsoever in any one year in excess of the income provided for such year." (Section 1.)

To re-state this provision, it is declared unlawful for the Board to (1) expend funds, (2) contract for expenditures, or (3) incur or permit incurring obligations in any one year in excess of the income provided for such year.

The Attorney General in an opinion to John J. Holmes, State Auditor, dated November 13, 1937, held that it was not illegal for the Board to overdraw its Conservation Revolving Fund, provided the expenditures were kept within the annual income.

An opinion by Attorney General, Raymond T. Nagle, 15 Attorney General's Opinions No. 310, held that claims incurred prior to the close of a biennium may be presented after the close of the biennium and should be paid. If the expenses were incurred during the biennium, the warrant might be drawn after its close.

In considering this question, we must differentiate between (1) expenditures made, and (2) contracts for expenditures, and the incurring or permitting the incurring of obligations. The Board has kept within its income as far as expending funds within the year in excess of its obligations. Therefore, if it has offended, it is upon the ground that it has contracted for expenditures or incurred or permitted the incurring

of obligations in a year in excess of its income.

We must consider this question in relation to the Conservation Revolving Fund, and also the Administration Fund, of the Board. The Conservation Revolving Fund provides additional appropriations to the Board of "all monies to be paid or repaid the State Water Conservation Board from any source and not expressly appropriated to some other fund or purpose."

Conservation Revolving Fund.

The facts are that the Board expends large amounts of money on projects, which money it may reasonably expect will be returned to the Board during a given fiscal year. The failure to receive repayment during such fiscal year causes the Board to receive this money at a subsequent time. The Attorney General, in an opinion to W. L. FitzSimmons, dated October 20, 1937, has strictly construed this law.

Section 12 of Article 12 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."

This provision of the Constitution was construed in the case of State ex rel. Tipton v. Erickson et al., 93 Montana, 466, wherein the legality of certain warrants upon the general fund of the State were questioned for the reason that they were drawn in excess of the appropriation for a given year. The warrants and funding bonds based thereon were held valid.

In particular, where the Legislature authorized various taxes and estimated the income of the State at a given figure, and upon such estimate based appropriations, and authorized the expenditure of funds in the same amount, and it later developed that the tax collected was much less than such appropriation, it was held that the

warrants issued by virtue of such appropriations were due and valid warrants. The principle is recognized that where such warrants were valid when issued, a deficiency in the tax collection or other facts would not render them invalid thereafter.

The same principle applies to the present situation. When obligations are incurred or warrants issued, same are valid if within the reasonably expended income. When funds advanced from this year's appropriation are returned by the Federal Government after the close of the year they go into the Conservation Revolving Fund for **such year** and should be used to pay all obligations incurred or outstanding in such year. Unless this were the rule, it would be almost impossible for the Water Conservation Board to function, and certainly where obligations are undertaken and the income is apparently available from the revenues of the current year to meet such obligations, the Board has not violated the letter or the spirit of this statute. Therefore, I am of the opinion that under such conditions there has been no violation of the said Chapter 40.

Administration Fund.

In connection with the Administration Fund, a very slight excess of expenses over income occurred. Funds returned from the Federal Government should generally be placed in the Revolving Fund. It is a matter of fact that many expenditures are made by the State Water Conservation Board in the preliminary investigation of projects, which expenditures are charged to the Administration Fund, and when such funds are returned from the Federal Government they are placed in the Conservation Revolving Fund.

Section 304, R. C. M., provides:

"All monies now or hereafter appropriated for any specific purpose shall, after the expiration of the time for which so appropriated, be covered back into the several funds from which originally appropriated."

It is certainly within the terms of this statute and the general principles of equity that the Board might transfer such funds from the Conservation Revolving Fund to the Administration Fund in order to recoup such Administration Fund to the extent that such

fund has been depleted by monies withdrawn therefrom and afterwards returned to the Conservation Revolving Fund.

I therefore hold these obligations and warrants based thereon do not violate this statute.

This conclusion is further supported by Section 349.25, which provides:

"This act being necessary for the welfare of the State shall be liberally construed to affect the purposes hereof";

and many other similar statements in the law, and the construction of the law by the Supreme Court of this State in the case of State ex rel. Normile et al. v. Cooney, 100 Montana, 391.