

is depleted, and no transfers of surplus funds from other funds, or items within the poor fund can be made, the county is entitled to a grant-in-aid for general relief.

2. The county cannot issue registered warrants against anticipatory revenue in the poor fund.

3. Registered warrants not representing cash on demand may not be issued in payment of relief.

4. It is mandatory upon the state to make grants-in-aid to counties when poor fund cash is shown to be exhausted.

July 22, 1938.

Mr. Wm. R. Taylor
County Attorney
Anaconda, Montana

Dear Mr. Taylor:

You have requested my opinion as to whether or not your county is required to issue anticipatory warrants upon the county poor fund, based upon anticipatory tax revenues for the entire tax year to meet general relief obligations. You advise this office that Deer Lodge county, until the present time, had cash in its poor fund available for such purposes but which is now exhausted.

Section IX, Part II, Chapter 82, Laws of 1937, makes it mandatory upon the board of county commissioners that taxes levied and collected for the county poor fund shall be expended only for the purpose stated. In referring to the money that may be expended, the statute includes taxes collected, as well as levied. The words "levied" and "collected" are used conjunctively.

Paragraph I of Section IX provides that it is within the authority of the state department of public welfare to make grants to the county for general relief purposes in proportion to the county's inability to provide the same. "Authority" does not mean discretion. It means that the state department is vested with legislative power to make the grants. Whether that power is discretionary or mandatory must be found in other provisions of the act.

Section V, Part II of the Public Welfare Act, requires disbursements to relief recipients to be made by warrant or check representing cash on

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HELD: When cash available for general relief purposes in the poor fund

demand. If anticipatory warrants are issued, it means that the warrants will have to be registered, and will draw interest until subsequently paid. Such warrants would not represent cash payable on demand. (State of Montana ex rel. Wilson v. Weir, et al., 106 Mont. 526.)

If the county is compelled to issue its poor funds for interest payments it would be in contravention of the statute requiring that said funds be used only for the purposes stated, that is, for relief payments, which payments are payable by warrant or check representing cash on demand. The statute, having circumscribed the use of said funds, precludes the county from paying interest out of the same.

Paragraph 3 of said Section IX declares that it is the legal and financial responsibility of the board of county commissioners to provide adequate relief to persons in need of the same to the extent that county funds are available. When the county's available cash for general relief in the poor fund is exhausted then the county has no funds available in the contemplation and meaning of said statute. Of course, where any transfers in other surplus items of the poor funds are possible or permissible, the same shall be made as a condition precedent to the grant-in-aid from the state. It was never the intent or purpose of the law to require the county to incur an indebtedness, warrant, bonded, or otherwise, for the care of the poor.

Therefore, it is my opinion that when all permissible means of making payment for general relief, including available cash for such purposes in the poor fund, are exhausted, after any possible transfer of surplus in any of the items of said fund are made and excluding the county from any necessity of issuing registered warrants upon anticipatory revenues, then it is mandatory upon the state department of public welfare to make grants-in-aid for general relief purposes to the county in such amounts as are needed.