Opinion No. 91.

Counties—Poor Fund—Emergency—Public Welfare.

HELD: 1. When a county has levied up to six mills for its poor fund, and has made transfers from other funds as provided by law, and is then unable to meet its share of public welfare disbursements, under Chapter 82, Laws of 1937, it may apply to state department of public welfare to assume the county's share of such obligation.

2. A county need not bond itself to meet its share of public welfare payments before the State must assume such payments.

April 19, 1937.

Board of County Commissioners
Scobey, Montana

Gentlemen:

Your letter, requesting further advice relative to the powers of the board of county commissioners and the county welfare board in your county, has been received. You state, "that an emergency authorizes the expenditure and levying of taxes therefor at some future time, but that does not create cash in the funds, so that it would appear to us as meaningless as far as cash in the various funds is concerned and especially the poor fund."

We think that the statute, Chapter 82, relative to the county being unable to declare an emergency, is indefinite. We believe it is the intent of the law that all available cash resources of the county shall be first exhausted before the county shall call upon the state, and we further believe that it is not the purpose or the intent of the law to compel a county to bond itself to meet an unlimited number of emergencies. To hold otherwise might conceivably force many counties into large bonded indebtedness. We have heretofore rendered an opinion upon this particular point, holding that the county must first exhaust its resources before the state would assume the burden, and in illustrating how these resources must be exhausted, we call attention to the power of the counties to transfer money from one fund to another.

You ask the question, "has the board of county commissioners the power to determine in which fund there appears to be a surplus?" In explanation of your question you state, "we have cash on hand in a number of our funds in which there appear to be no surplus, and which would keep these funds on a cash basis until the end of the present fiscal year."

Section 4639.1 provides that "whenever the county has under its control any moneys in any special fund subject to deposit which in the judgment of the board of county commissioners it would be advantageous to invest in county warrants, the county commissioners are **authorized in their discretion** to direct the county treasurer to purchase county warrants of the same county, thereafter issued against funds in which there is not sufficient money to pay such counuty warrants **at the time of issuance**, and in case of such purchase the county commissioners shall designate the fund or funds to be so invested" In transferring funds, from one fund to another, in determining whether or not you have a surplus in any particular fund, you should base your calculation upon a period covering the fiscal year, and include therein anticipated revenues for the fiscal year. We do not consider it good policy, nor the intent of the law, to transfer funds from your general fund or other funds so as to exhaust those funds before the end of the fiscal year, because in the end nothing would be gained by so doing, and the practical result would be to postpone the state's obligation for a temporary period, and in the ensuing fiscal year to impose an additional burden upon the state.

You state that in your county "the bond sinking fund has been used for the purpose of investing in general fund salary warrants at the present time, but not to exceed the reserve which we must have on hand to pay bonds that are coming due." You inquire as to whether or not the poor fund warrants should be given preference for investment purposes out of the bond sinking fund

Section 4630.30 provides that "if the board cannot purchase any of the outstanding bonds at such reasonable price, then such available money in such sinking and interest fund shall be invested by the county treasurer, under the direction of the board of county commissioners, in other bonds of the county, in warrants of the county or any other county of the state, in bonds or warrants of the state, or in bonds or treasury certificates of the United States; provided, however, that such sinking and interest funds shall only be invested in such securities as will become due and payable at least thirty (30) days before the date when the bonds of the county of such series or issue will become redeemable." It appears that you have followed the correct procedure in the use of your sinking fund and that you have properly retained a reserve as required by the statute.

It is our opinion that it is within the sound discretion of the board of county commissioners as to the warrants to be purchased for investment purposes from the sinking fund, whether poor fund or general fund warrants. Our view of the law is that it is not mandatory upon the board to give preference to any particular fund, but that they should take into consideration the financial condition of the county and of these particular funds, and that they should not particularly favor the general fund to the prejudice of the poor fund.

You ask the further question as to whether or not the county's proportionate share of the relief burden becomes the responsibility of the State Public Welfare Board as soon as the cash in the poor fund has been exhausted, and also all other cash in various other funds in which there might possibly appear to be a surplus, is transferred and exhausted.

In this respect we believe that you should take into consideration the anticipated revenues that you will receive from the May tax collection, which collection is within the fiscal year, and that your funds cannot become exhausted until you have used those anticipated collections within the present fiscal year. We hold that when such has been done, and when all emergencies have been declared as will raise cash, excluding therefrom any requirement of bonding your county, then you may, if necessary, make request to the state examiners, who will require you to submit all the facts of your financial condition to them, and if they deem that you have exhausted your cash resources, your county's relief burden then would devolve upon the state.

I am advised that in the very near future the State Public Welfare Board will forward to your county certain rules and regulations promulgated by it, as provided by law, and these rules will aid your board in the exercise of its legal and sound discretion in the use and expenditure of these various funds and, furthermore, the State Public Welfare Commission will establish and make rules uniform for each and every county in the state.