

Opinion No. 174.

**Public Welfare—County Commissioners—Reimbursements—
Emergency Warrants.**

HELD: The county commissioners, having failed to make payment for reimbursements due the State Department of Public Welfare before the close of the fiscal year, and having failed to make provision for such payment in the budget for the ensuing fiscal year, may declare an emergency under Section 4613.6, and issue emergency warrants in payment thereof.

Reimbursements due the State Department of Public Welfare under the Welfare Act are mandatory expenditures required by law.

December 7, 1939.

Mr. D. Gordon Rognlien
County Attorney
Kalispell, Montana
My dear Mr. Rognlien:

You have requested my opinion as to whether or not the county commissioners can legally pay from the poor fund budget of Flathead county, for the fiscal year 1939-1940, an item of \$15,566.29, representing the county's share of old age assistance, aid to dependent children and aid to the blind, due as reimbursement to the State Department of Public Welfare for the fiscal year 1938-1939, under the provisions of Chapter 82, Laws, 1937, as amended.

It appears from the letter of Mr. I. M. Brandjord, Administrator of the Department of Public Welfare, to the Flathead County Commissioners, dated November 23, 1939, that the following are the facts:

1. At the close of business for the month of June, 1939, Flathead county owed the State Department of Public Welfare for reimbursements for old age assistance, aid to dependent children, aid to needy blind, and administrative costs, the sum of \$15,566.29.

2. When the county closed its official business for the fiscal year ending June 30, 1939, and had paid all claims presented against its poor fund for that fiscal year, except these reimbursements, there was a net balance in the poor fund in the sum of \$11,240.29.

In addition to the above, you advise that the poor fund budget for the fiscal year 1939-1940 did not make provision for the payment of this unpaid account, but has provided only for reimbursements payable during such fiscal year.

Under the provisions of the Welfare Act it is made the duty of the board of county commissioners to levy the per capita tax of \$2.00 and the six (6) mills for the county poor fund, or so much thereof as is needed, and to budget and expend so much thereof as will enable the county welfare department to pay the general relief assistance, and to meet its proportionate share of old age assistance, aid to needy dependent children, aid to needy blind and its proportionate share of any other welfare activity that may be carried on jointly by the state and county. (Subsection (b), Section XI, Part I, Chapter 82, Laws, 1937, as amended by Section 8, Chapter 129, Laws, 1939.) (Emphasis ours.) These amounts, when determined, become a legal obligation of the county and payable at the times provided by the Act.

As to the time of payment, Subsection (b) of Section XIX, Part I, Chapter 82, provides:

"Reimbursement of state by county. On or before the twentieth day of each month the state department will present a claim for reimbursement to each county department for its share of public assistance granted in the county during the month. The county department **must** make such reimbursement to the state department within twenty days after such claim is presented."

And Subsection (b), Section X, Part I, Chapter 82, Laws, 1937, as amended, provides:

"* * * On or before the 20th day of the month following the month for which the payments to the public assistance staff personnel of the county were made, the state department of public welfare shall present to the county department of public welfare a claim for the required reimbursements. The county board shall make such reimbursements within twenty (20) days after the presentation of the claim and the state department shall credit (add) all such reimbursements to its account for administrative costs."

A reading of the whole Act discloses the method by which payments of these forms of assistance are determined and made. The county commissioners, as a county welfare board, and a part of the county welfare department, after investigation of applications, determine the amount to be granted and certify such amount to the state department. Upon such certification, the state department is authorized to make the payment direct from state funds. The Act then provides the proportionate share of each of such forms of assistance which the county must pay by reimbursement to the state. (Section V, Part III, Chapter 82, L. 1937.) The statute provides that the county **must** make the reimbursement. Then it becomes mandatory upon the county.

There is no contention that the amount claimed due by the state department is not the correct amount. We must assume, therefore, that the amount has been approved and thus

become liquidated. Hence, under the statute, there is no alternative for the county but to make such payment. The question, however, under the facts here presented, in view of the apparent restrictions of the Budget Act, is whether the county may now make such payments.

Section 4613.6 of the County Budget Act provides, in the last paragraph thereof as follows:

"All appropriations, other than appropriations for uncompleted improvements in progress of construction, shall lapse at the end of the fiscal year; provided that the appropriation accounts shall remain open for a period of thirty days thereafter for the payment of claims incurred against such appropriations prior to the close of the fiscal year and remaining unpaid. After such period shall have expired all appropriations, except as hereinbefore provided regarding uncompleted improvements, shall become null and void, and any lawful claim presented thereafter against any such appropriation shall be provided for in the next ensuing budget."

But this section does not aid us for the reason that the budget for the next ensuing fiscal year, viz., 1939-1940, does not make provision for the payment of the claim in question.

A somewhat similar situation confronted the Supreme Court in the case of *State v. Board of County Commissioners*, reported in 100 Mont. 581.

In that case, assessments were levied by a legally created drainage district against the county for benefits accruing to certain county highways; the county failed to pay such assessments for several years, although said assessments were duly and regularly levied and determined as provided by the Drainage Act then in force. Mandamus was brought against the county commissioners by the Drainage District to compel the issuance of warrants in payment of said assessments. It appeared that no provision had been made in the budget for the payment of the assessment and no money was available for such payment. In sustaining the action of the lower court in granting the Writ of Mandamus the Court held that these judgments, or claims, were in reality liquidated claims for mandatory expenses and

therefore could be paid by emergency warrants to meet mandatory expenses required by law under the provisions of the Budget Act. We believe the situation here presented is analagous to that in the case cited. Here, the claim is liquidated; under the statute it is a mandatory expenditure and therefore properly an "emergency" within the language of the Budget Act.

It is, therefore, my opinion that the county commissioners of Flathead county may declare an emergency and pay the claim of the State Department of Public Welfare by the issuance of "Emergency Warrants" in accordance with the provisions of Section 4613.6, Revised Codes of Montana, 1935.