

Opinion No. 175.**Counties—County Commissioners—
Warrants—Anticipatory
Warrants.**

HELD: When a county has reached its constitutional limit of indebtedness it may not issue warrants in anticipation of taxes levied or to be collected when such warrants are general obligations against the county.

Such county may, however, issue warrants in anticipation of taxes levied under the provisions of Chapter 85, Laws, 1937, since such warrants are obligations against the special fund therein created for which a special levy is authorized for a special purpose.

December 8, 1939.

Mr. F. V. Watts
County Attorney
Roundup, Montana

My dear Mr. Watts:

I am in receipt of your letter enclosing copy of your opinion to the County Commissioners in which you hold that they may not issue warrants in anticipation of taxes against the poor fund, inasmuch as Musselshell county is now over the constitutional limit of indebtedness and is operating on a cash basis.

In Opinion No. 149 of this volume of Official Opinions of the Attorney General, rendered to Mr. I. M. Brandjord, Administrator of the State Department of Public Welfare, this office

held that Musselshell county, even though over its constitutional debt limit, could issue emergency warrants under the provisions of Chapter 85, Laws, 1937. However, that opinion was based specifically on the provisions of Chapter 85. While the language used in that opinion might possibly be interpreted as holding that anticipatory warrants may be issued in any event, yet such language, in view of the question considered, would be merely obiter dicta. The question upon which the opinion was written and as appears in the first paragraph was, "whether or not Musselshell County, under the facts given, is prohibited by Section 5 of Article XIII of the State Constitution from issuing emergency warrants under the provisions of Chapter 85, Laws of 1937, as amended." The question upon which your opinion is based is as to whether or not Musselshell County is prohibited by Article XIII of the Constitution from issuing anticipatory warrants against the poor fund.

Opinion No. 149 is predicated principally upon the language of the Supreme Court in the case of *State ex rel Helena Water Works, v. City of Helena*, reported in 24 Mont. 521, distinguishing between an indebtedness which is a general obligation and one which is an obligation against a special fund or levy. For convenience, we repeat here the quotation:

"The case of *Davenport et al., v. Kleinschmidt, et al.*, and the *Great Falls* case stand for two different principles. The first is an authority for the proposition that when a municipality has exceeded the constitutional limit of indebtedness a contract for a water supply, under which the city is liable generally, is the incurring of an indebtedness, within the meaning of the constitution, and the *Great Falls* case is an authority for the proposition that such a contract does not create an indebtedness when the city making the contract is authorized by law to levy a special tax expressly for the payment of such contract liability. In a case falling within the first class, the liability of the city is general, and is payable out of all its revenues; * * *. In cases falling within the second class, the liability is special and is limited to the amount of

the special tax, the levy of which is expressly authorized by law."

Applying the distinction pointed out by the Supreme Court in the quotation above to the two questions here confronting us, we see that a warrant issued against the poor fund is a general obligation against the county while by express provision of Chapter 85, Laws 1937, the warrants thereunder authorized to be issued are specifically made payable from a special levy authorized to be made for that specific purpose.

In view of the language used by the Supreme court in the *Helena Water Works* case reported in 27 Mont., and approved in the *Farbo* case, 95 Mont. 531, as follows: "We can conceive of no possible ground for the supposed distinction between an indebtedness for current expenses, payable out of the current revenues, and one for the payment of which no provision has been made, and for which the city is generally liable," we are inclined to believe that were the question of anticipatory warrants against the poor fund of Musselshell County, under the circumstances, before the Supreme Court, they would adhere to the above principle and hold against their validity. While, on the other hand, as to warrants issued under Chapter 85, the payment of such warrants has been provided for by said Chapter, and are not general obligations.

We therefore agree with your opinion and hold that under the facts given; viz., that Musselshell county is beyond its constitutional limit of indebtedness, the county commissioners may not issue warrants against the poor fund in anticipation of taxes to be levied and collected.