Opinion No. 275.

Constitutional Law—County Commissioners—Emergency Warrants—Poor Fund.

HELD: Sec. 5, Art. XIII of the Constitution, or Section 4717, R. C. M., 1935, does not prohibit the incurring of an indebtedness or a liability or the borrowing of money for the poor in excess of $10,000 without the approval of the electors of the county.

December 20, 1940.

Mr. I. M. Brandjord, Administrator
State Department of Public Welfare
Helena, Montana

My dear Mr. Brandjord:

You have requested my opinion on the following state of facts:

The Board of County Commissioners of Yellowstone County has declared an emergency in the poor fund, set up an emergency budget against which warrants have been issued. The warrants issued against this fund, in the approximate sum of $2,500, when added to other poor fund warrants issued and not paid would exceed $10,000. The money represented by these warrants is to be expended in general relief grants in the county.

I am further advised that Yellowstone County has levied the six mills provided as the maximum for the poor fund, and that the portion budgeted for general relief has been exhausted and no surpluses in other budget items of the poor fund or in any other county funds exist so that a transfer might be made to the poor fund.

You advise that the banks of Yellowstone County have refused to accept these warrants on the ground that they are illegal as in violation of Section 5 of Article XIII of the State Constitution and of Section 4717, Revised Codes of Montana, 1935.

Section 5, Article XIII, prohibits any county from incurring any indebtedness or liability for any single purpose in an amount exceeding $10,000, and Section 4717 prohibits the County Commissioners from borrowing money for any single purpose in an amount exceeding $10,000, without the consent of the electors.

Admitting that these warrants constitute the incurring of an indebtedness or liability or borrowing of money, we then have the question whether the purpose for which the money is to be expended is "a single purpose" within the prohibitions noted.

In the consideration of this question we must look to other constitutional and statutory provisions. Section 5 of Article X of the Constitution provides:

> "The several counties of the state shall provide as may be prescribed by law for those inhabitants, who by reason of age, infirmity or misfortune, may have claims upon the sympathy and aid of society."

Section 4465.4, R. C. M., 1935, in defining the powers of the County Commissioners, provides as follows:

> "To provide for the care and maintenance of the indigent sick or otherwise dependent poor of the county * * * "

Section 5, Article XIII, supra, has many times been before our supreme court for determination as to its application to certain facts. I have been unable to find a case involving directly the expenditure for relief. However, in the case of Panchot v. Leet, 50 Mont. 314, our Court uses language which very aptly applies to this situation. That case involved the expenditure for the building of a county high school. The same objection was raised as is here presented. While the court in that case held the expenditure was in violation of the constitutional provision, because for a single purpose, in discussing the provision and its meaning as applied to the facts in the case, had this to say, at page 320:

> "A dismal picture is presented of the confusion which will ensue if the approval of the electors must be had every time the county proposes to expend $10,000 or more; and, as an example of such confusion, it is said: 'Assuming the statement made by the press to be true that Silver Bow expended last year more than $100,000 on her poor, then it must be that such expenditure was unlawful, unless it followed upon a vote of the people, which probably did not take place.' **The only confusion suggested by this is a confusion of thought; for it is perfectly obvious that the distribution of various amounts for the relief of various indigent persons, even though the aggregate exceeded $10,000 taken from the county poor fund, is in no wise analogous to the expenditure of a sum certain for the single purpose of erecting a public building.**" (Emphasis ours.)

The court, speaking through Justice Sanner, then distinguishes expenditures for relief and expeneditures in erecting buildings in the following language:

> "The first (referring to relief) is a distribution founded on a duty expressly imposed, to meet an ever-present condition encountered in the regular and normal functioning of the county; the second is an expenditure, founded on a liability for a single, occasional purpose, forbidden under certain conditions."

And in a later case (Cryderman v. Wienrich, et al., 54 Mont. 390), where this same constitutional provision was considered, the court, speaking again through Justice Sanner, said:

> "That the incurring of an indebtedness, whether by bonds or warrants, for the particular object contemplated by this Act is a single purpose may not be gainsaid, even though, as pointed out in Panchot v. Leet, 50 Mont. 314, 321, 146 Pac. 927, **the aggregate of disbursements to the general poor cannot be so regarded.**" (Emphasis ours.)

The authorities seem to distinguish between debts or liabilities created voluntarily and those imposed by law. In 15 Corpus Juris at page 577, it is said:

> "In some jurisdictions constitutional and statutory limitations on the amount of indebtedness which a county may create are held to apply to any and all indebtedness created in any manner or for any purpose, while in other jurisdictions all the valid outstanding indebtedness not excepted from the limitations by express provision or by construction must be considered in determining the aggregate amount of indebtedness. In considering what debts are within constitutional and statutory limitations as to amount, it is well to bear in mind that there are two classes of county debts and obligations, namely, voluntary and involuntary. The limitations in some jurisdictions are construed to apply to both voluntary obligations and to compulsory obligations imposed by law. In some jurisdictions, where the limit has been reached, involuntary obligations which are fixed and imposed by law are preferred claims; and voluntary obligations assumed or incurred beyond the limit are invalid as to payment. **In other jurisdictions, however, such limitations have been held to apply only to debts and liabilities voluntarily created and not to necessary county expenses or compulsory obligations * * *.**" (Emphasis ours.)

And under the latter, the author cites the case of Panchot v. Leet, supra. In the note to the above quotations, in discussing the term "ordinary and necessary expenses" the author says:

"Within the meaning of such a constitutional provision an expense is 'ordinary' if it is in an ordinary class. If in the ordinary course of the transaction of muncipal business or the maintenance of municipal property it may and is likely to become necessary, **and it will be assumed that if by law a specific duty is imposed and the mode of performance is prescribed, so that no discretion is left with the officer, the expense necessarily incurred in discharging the duty is a 'necessary expense.'**" (Citing, Dexter Horton Trust, etc., Bank v. Clearwater County, 235 Fed. 743.) (Emphasis ours.)

The Supreme Court of Washington, in the case of Rauch v. Chapman, 48 Pac. 253, said on this question:

"We are constrained to rule that the constitutionl limitation of county indebtedness in Section 6 of Article 8 of our Constitution does not include those necessary expenditures made mandatory in the Constitution and provided for by the legislature of the state, and imposed upon the county."

The courts of many other jurisdictions have taken similar views. See the following cases:

Grant County v. Lake County, 17 Ore., 453, 21 Pac. 447; Lay Cook v. City of Baton Rouge, 35 La. Ann. 479; Upton v. Strommer, 101 Minn. 97; 111 N. W. 956; Parish-Stafford v. Lexington County, 100 S. C. 311, 84 S. E. 1002;

Hanley v. Randolph County, 50 W. Va. 439, 40 S. E. 389.

This question has been considered by the Attorney General on at least three previous occasions. See Opinions of Attorney General, Vol. 6, page 77 (Attorney General D. M. Kelly); Vol. 8, page 149 (Attorney General S. C. Ford), and Vol. 15, page 91 (Attorney General Ray Nagle).

Therefore, in the face of the foregoing opinions and decisions of our own and other courts, it is my opinion that the warrants of Yellowstone County issued under the facts given will not constitute such a debt or liability, or the borrowing of money within the prohibition of Article XIII, Section 5, of the State Constitution, or Section 4717, R. C. M., 1935, and such warrants when so issued will be valid obligations of the county.