

## Opinion No. 65.

## Counties—Warrants—Funding.

HELD: Registered outstanding warrants for which call for payment has been made may not thereafter be funded under provisions of Chapter 188, Laws 1939.

May 17, 1939.

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

My Dear Mr. Brandjord:

You have requested an opinion on the following set of facts:

Missoula County Treasurer under date of May 1, 1939, made a call for the payment of all poor fund warrants issued on or before February 28, 1939, amounting to approximately \$28,000.00. The county proposes to issue funding bonds under the provisions of Chapter 188, Laws, 1939. An estimate of tax collections now shows that the county will need the \$28,000.00 to meet the expenditures from the poor fund during the remainder of the fiscal year terminating June 30, 1939. The question presented is, may the county include in the funding bonds this \$28,000.00 of poor fund warrants which have been called for payment?

Under the facts given we assume these warrants were valid and subsisting outstanding warrants drawn against the poor fund on February 28, 1939. If there was not sufficient money in the fund to pay these warrants and leave a balance sufficient to meet the expenditures from such fund necessary to be made therefrom during the fiscal year ending June 30, 1939, the county, under the provisions of Chapter 188, could have funded such warrants either separately or included with warrants of other funds of the county.

However, the county treasurer on May 1, 1939, issued a call for the payment of these poor fund warrants. This fact raises the question whether registered warrants which have been called for payment may be funded under the provisions of Chapter 188.

Section 4752, Revised Codes of Montana, 1935, provides that when a war-

rant is presented for payment if there is money in the treasury for that purpose the treasurer **must** pay the same.

Section 4754, Revised Codes of Montana, 1935, provides that when there are sufficient moneys to pay warrants drawing interest, the treasurer **must** give notice that he is ready to pay such warrants, and from the first publication or posting of notice such warrants cease to draw interest.

Section 4756, Revised Codes of Montana, 1935, provides that warrants **must** be paid in order of their priority in time of presentment. It further provides that upon receipt of moneys into the treasury, not otherwise appropriated, the treasurer **must set apart** the same, or so much thereof as is necessary for the payment of such warrants. Section 4758, R. C. M., 1935, provides that if such warrants are not re-presented for payment within sixty days from the time of the notice, the fund set aside for the payment of the same must be applied to the payment of unpaid warrants next in order of registry.

In view of these provisions of our statutes, when there is sufficient money in any fund against which there are outstanding warrants drawing interest, it is the duty of the treasurer to pay such warrants when presented. (Section 4752, R. C. M., 1935.) And he must give notice either by publication in a newspaper or posting (Section 4754, R. C. M., 1935), and from the time of the notice must set aside any money in the treasury not otherwise appropriated for the payment of such warrants. The money so set aside becomes trust funds. In the case of State ex rel. Case v. Bolles, et al., 74 Mont. at page 65, our supreme court has held:

"The money necessary to pay these called warrants is set apart by the treasurer (Sec. 4758) and held in trust for a period of sixty days, when, as pointed out above, if the warrants so called are not re-presented for payment, the money must be applied to the payment of unpaid warrants next in order of registration."

(See also State ex rel. Blenkner v. Stillwater County, 104 Mont. 387; State ex rel. DeKalb v. Ferrell, 105 Mont. 218.)

I understand that notice calling these warrants for payment has actually been published and some of the warrants have been paid in pursuance to the notice.

It is my opinion under the facts given that the warrants in question may not be funded.