

No. 276

COUNTIES—WARRANTS, order of payment of county

- Held: 1. No distinction is to be made in order of payment of regular warrants and emergency warrants. They are considered as one class for the purpose of payment and should be made in their order of registration.
2. Under Chapter 112, Laws of 1941, the floating indebtedness therein mentioned may be paid from the poor fund when the special fund therein mentioned is insufficient.

October 20, 1941.

Mr. R. F. Hibbs
County Attorney
Yellowstone County
Billings, Montana

Dear Mr. Hibbs:

You inquire:

- (1) Should there be any distinction made in the payment of registered warrants which were issued under an emergency Poor Fund Budget as against regular warrants issued on the Poor Fund?
- (2) Is "floating indebtedness," referred to in Chapter 112, Laws of 1941, payable only from the "poor fund debt reduction fund?"

The creation of an emergency budget and issuance of warrants thereunder is authorized by Section 4613.6 of the Revised Codes of Montana, 1935, which also provides such warrants shall be paid in the following manner:

"All emergency expenditures shall be made by the issuance of emergency warrants drawn against the fund or funds properly chargeable with such expenditures, and the county treasurer is authorized and directed to pay such emergency warrants with any money in such fund or funds available for such purpose, and if, at any time, there shall not be sufficient money available in such fund or funds to pay such warrants then such warrants shall be registered, bear interest and be called in for payment in the manner provided by law for other county warrants."

Section 4756 of the Revised Codes of Montana, 1935, directs payment of warrants drawn on the treasury according to the priority of time in which they were presented. Section 4612 of the Revised Codes of Montana, 1935, as it pertains to this question, requires payment of warrants in order of registration.

No distinction whatever is drawn between the two types of warrants. The holder of the "regular" warrants takes them in with knowledge of the law authorizing the issuance of "emergency" warrants. In answer to the first question, I agree with you in your conclusion no distinction should be made in order of payment of the two classes of warrants. They should be treated as one class for the purpose of priority of payment.

Turning now to the second question presented, I have reached the conclusion "the floating indebtedness" referred to in Chapter 112, Laws of 1941, is payable not only from the "poor fund debt reduction fund" therein described but also from the poor fund. While Chapter 112 requires the "poor fund debt reduction fund" shall be used only to retire floating indebtedness, the converse is not true and such indebtedness may be retired from funds other than the special fund designated.

Section 4465.4 of the Revised Codes of Montana, 1935, as amended by Chapter 165, Laws of 1941, authorizes the county commissioners to levy a two dollar per capita tax and a six-mill levy for the poor fund. Subsection (b) of Section XI of Part I of Chapter 82, Laws of 1937, as amended by Chapter 129, Laws of 1939, as amended by Chapter 117, Laws of 1941, requires the maximum levy under the power granted.

The counties may issue emergency warrants in addition to the six-mill levy. (*State et al. v. Brandjord*, 107 Mont. 231, 82 Pac. (2nd) 589.) Under Section 4613.6 of the Revised Codes of Montana, 1935, the county commissioners when making a levy for the ensuing fiscal year must include a levy sufficient to raise an amount equal to the emergency warrants issued during the preceding fiscal year. Yet, under the same section, it is provided the levy shall not be made "in excess of the levy authorized by law." This led to a result whereby the issuance of emergency warrants in the preceding fiscal year meant, in most cases, a corresponding decrease in funds available for current expenses in the then present fiscal year. The counties, in order to secure grants-in-aid from the state, were forced to issue emergency warrants as long as such warrants could be "freely converted into cash" without discount. (*State et al. v. Brandjord*, supra.) Thus a financial morass was created from which many counties could not, under existing economic conditions, extricate themselves. Chapter 112 of the Laws of 1941 was obviously designed to remedy the situation by providing a means of retiring floating indebtedness without diminishing the amount available for current expenditures under the six-mill levy for the succeeding fiscal year. To a certain extent, at least, it has achieved this purpose and within constitutional limitations. With this brief background, I shall take up the reasoning sustaining my answer to your second question.

It should be observed at the outset the legislature may not give preference to other claims over warrants issued and registered under pre-existing laws making no such preference. (*State v. District Court*, 62 Mont. 275, 204 Pac. 600.) If a new provision is made for payment of the warrants, the new arrangement must furnish an equally safe, certain and speedy provision for payment. (*E. E. Rollins & Son v. Board of Comm.*,

199 Fed. 71.) Faced with these and other authorities to the same effect, we must adopt a view of Chapter 112, Laws of 1941, consistent with such holdings and its constitutionality. In my opinion the warrants and other floating indebtedness should be paid from the "poor fund debt reduction fund" whenever money is available therein. Yet warrant holders should not be required to look exclusively to that special fund for payment if it becomes depleted or is insufficient to take care of the classes of indebtedness it was designed to meet. This arrangement will not do violence to the requirement warrants be paid in the order of their registration. It is only when money is available in the special fund that payment must be made from such fund. Any overplus in the special fund reverts eventually to the poor fund.

Under the present arrangement, therefore, the poor fund, though subjected to payment of the floating indebtedness mentioned in Chapter 112, Laws of 1941, when the special fund is insufficient, eventually becomes the recipient of the benefits of the one-mill extra levy authorized by Chapter 112, Laws of 1941. Similar problems were presented in Volume 14, Opinions of the Attorney General, 221, and Volume 15, Opinions of the Attorney General, 286. These opinions support this ruling.

Sincerely yours,

JOHN W. BONNER
Attorney General