

No. 316

PUBLIC WELFARE—WELFARE—WARRANTS, emergency—WARRANTS—GRANT-IN-AID, when county entitled to—TRANSFERS—COUNTY COMMISSIONERS

- Held:**
1. The county commissioners may lawfully declare emergencies under the provisions of Section 4613.6, Revised Codes of Montana, 1935, and issue emergency warrants for relief purposes without submitting the question to a vote of the electors.
 2. The State Board of Public Welfare may transfer any funds not needed for the purposes of (a) old age assistance, (b) aid to needy dependent children, (c) aid to needy blind, or (d) child welfare services, to (f) general relief.
 3. When the income of the poor fund from a six mill levy, and all other sources, is insufficient for expenditures of the poor fund for any fiscal year and when the county has issued anticipatory warrants as authorized by law and has issued emergency warrants as authorized by Section 4613.6, Revised Codes of Montana, 1935, in an amount which may reasonably be anticipated can be paid from the anticipated revenue for the poor fund for the succeeding fiscal year and leave sufficient for

mandatory expenditures for such succeeding fiscal year, the county is entitled to a grant-in-aid from state funds, under the provisions of Section IX, Part II, Chapter 82, Laws of 1937, as amended by Section 14, Chapter 129, Laws of 1939, and Section 7, Chapter 117, Laws of 1941.

December 11, 1941.

Mr. Frank J. Roe
County Attorney
Silver Bow County
Butte, Montana

Dear Mr. Roe:

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

1. "The Commissioners desire to know first, whether the declaration of an emergency for the issuance of emergency warrants against a levy in said matter (for the years 1942-43) and out of the moneys to carry the relief expenditures for the months of November and December of this year could be legally accomplished as requested by said Board. Their letter, a copy of which is annexed, details the entire situation in respect to the matters at hand.
2. "The Commissioners also make inquiry as to the power of the Welfare Board to transfer certain not needed funds to the 'Grant in Aid,' in order that such grant might be made to this County to defray the expenditures arising against the poor fund for the months of November and December, 1941, as provided for in the Laws of 1941, page 391, et seq., referred to in their letter."

In the letter of the county commissioners which you enclose, the following facts concerning the condition of the Poor Fund of Silver Bow County are given:

"The general relief fund has heretofore been entirely depleted, and the Commissioners have just recently declared an emergency in the amount of \$10,000.00, to pay for obligations already incurred. These warrants will have to be paid from the anticipated revenue of 1942-43. The maximum amount allowed by law as a levy for the poor fund is six mills. The six mills has been levied for the year 1941-42 in its entirety.

"On July 1, 1941 the condition of the poor fund was as follows: There was a difference of cash on hand and outstanding warrants of \$47,515.91, thereby leaving a net indebtedness of this amount at the beginning of this fiscal year. This indebtedness included \$15,800.00 in emergency warrants which were issued during the year 1940-41, the balance being regular Poor Fund warrants issued, which were not redeemed on account of insufficient funds.

"The six mill levied for this year remains uncollected, but when paid, will go into the Poor Fund, where it will be available for the payment of warrants issued but not cashed thru lack of funds. The anticipated revenue to be received from the six mill for the fiscal year is (based on 100% collection) \$149,287.88. Added to this anticipated revenue from other sources of approximately \$61,300.00, which includes \$30,000.00 anticipated from the State Welfare Department, as our inverse proportion of the State money allocated for this purpose, making a total of all revenue anticipated of \$210,587.88, from which the overdraft of \$47,515.91, must be paid, which would leave an anticipated budget figure for this fiscal year of \$163,071.97. This amount has been budgeted for in its entirety for all Poor Fund purposes, including all Public Welfare activities in which the county participates.

"In addition to budgeting for the \$163,071.97, the Commissioners on November 4th created an emergency in the amount of \$10,000.00 for the purpose of paying outstanding obligations incurred in the General Relief Fund. Warrants marked 'Emergency' have already been issued for this \$10,000.00. The emergency has been created, and must be paid from revenue anticipated from the six mill levy and other sources in the 1942-43 budget or fiscal year.

"It was stated by members of the State Public Welfare Board that before considering making any 'Grant In Aid' to Silver Bow County, that under the existing law, Silver Bow County must declare further emergencies during the months of November and December for an estimated amount of \$25,000.00, which the local officials feel that they will expend for General Relief purposes for the above mentioned two months, the amount of such emergencies, if created, to be chargeable against the revenue anticipated for the fiscal year 1942-43. The "Grants In Aid" referred to, is that provided for in Chapter 82, of the Laws of 1937, as amended by Chapter 117 of the Laws of 1941 (Section 9).

"In view of the above, the question is: Can the Board of County Commissioners of Silver Bow County make and declare an emergency for the issuance of approximately \$25,000.00 warrants against the anticipated revenue of 1942-43. Under the provisions of 4613.6 R. C. M., 1935, under which emergencies are allowed, can such an emergency be declared and can the warrants be lawfully issued?"

This office, in Opinion No. 124, Vol. 19, Report and Official Opinions of the Attorney General, set forth the conditions which must exist before the State Board must make a grant-in-aid under the provisions of Section IX, Part II, Laws of 1939, as amended by Chapter 117, Laws of 1941. In summing up, the opinion holds:

"In short, it would appear that when a county has made a reasonable showing, satisfactory to the board, its poor fund is inadequate to meet all the expenditures required to be met by such fund, and that the county commissioners have exhausted every legal means to provide money for the poor fund, and have not used any of the poor funds for purposes other than expenditures authorized by law, the state board must, to the extent of funds available in the Public Welfare appropriation, make a grant of state funds to such county.

"Many questions have arisen and will arise as to whether in specific instances, county commissioners have exhausted all legal means within their authority to provide money for the poor fund purposes and in other ways complied with the requirements entitling the county to a grant. Numerous opinions have already been issued relative to these questions. Some of these opinions may not now apply due to amendments of the sections of the Act covered by the specific opinion."

It is evident, from the facts given, the income of the poor fund from the six mills and all other sources—after deducting the amount of registered warrants—will be insufficient to take care of the mandatory expenditures from the poor fund. Then there remains only one source from which funds may be provided, viz., by the issuance of emergency warrants under the provisions of Section 4613.6, Revised Codes of Montana, 1935. It is assumed the legal amount of anticipatory warrants has been issued and transfers from other funds as authorized by law have been made. The question then arises as to what extent the county may issue emergency warrants.

Section 4613.6, Revised Codes of Montana, 1935, among other things provides,

" . . . The county clerk and recorder shall include in his annual tabulation to be submitted to the board of county commissioners the total amount of emergency warrants issued during the preceding

fiscal year, and the county commissioners shall include in their tax levies a levy for each fund sufficient to raise an amount equal to the total amount of such warrants, if there be any, remaining unpaid at the close of such preceding fiscal year because of insufficient money in such fund to pay the same; provided, however, that no levy shall be made for any fund in excess of the levy authorized by law to be made therefor; and provided further, that the board of county commissioners may submit the question of funding such emergency warrants at an election, as provided by law, and if at any such election the issuing of such funding bonds be authorized it shall not then be necessary for any levy to be made for the purpose of paying such emergency warrants . . ." (Emphasis mine.)

By this provision the county commissioners are directed to "levy . . . sufficient to raise an amount equal to the total amount of such warrants . . . remaining unpaid at the close of such preceding fiscal year because of insufficient money in such fund to pay the same; provided, however, that no levy shall be made for any fund in excess of the levy authorized by law to be made therefor . . ."

Therefore, this statute, granting authority to issue emergency warrants, requires the same to be paid by a tax levy at the next budget period, in an amount sufficient to make such payment, but not in excess of the levy authorized by law, which in the case of the poor fund here in question is six mills. Thus it would seem the legislature contemplated no greater amount of emergency warrants be issued under authority of Section 4613.6, Revised Codes of Montana, 1935, *supra*, than could be paid from the revenues derived from the six mill levy. Inasmuch as the six mill levy must also provide revenue for other expenditures of the poor fund, it must follow the total receipts from this levy must also include, besides the amount of these warrants, sufficient for the other expenditures from this fund.

Prior to the enactment of the Public Welfare Act (Chapter 82, Laws of 1937) each county of the state provided, through its own revenues, for the care of the indigent poor. In line with the policy of the federal government as expressed in the Social Security Act, our state, along with the nearly every state of the union, cooperates with the federal government and the counties in sharing this financial burden. This new policy grew out of the recognition that under our democratic form of government when, through no fault of their own, our citizens were unable to provide for themselves, a duty devolved upon the government to assist. Readily adopting this policy, our legislature has at each session since 1937 appropriated from state funds specific sums to aid and assist the counties in performing this duty.

While the state recognizes its duty to assist the counties, it still insists the primary duty is with the county. It has, therefore, provided certain conditions which the county must meet before state funds will be provided. These conditions are set forth in Section IX, Part II, Laws of 1937, as amended, *supra*. However, in my opinion it was never intended that, before a county is entitled to state aid, it should create an indebtedness to the extent of its constitutional limit. If such were the intention, then it is clear to see a financial morass would result. When a county had exhausted all sources of taxation, then the entire burden would devolve upon the state.

Section 6 of House Bill 366 (the appropriation for the Department of Public Welfare for the biennium 1941-43) provides:

"Section 6. Any money hereby appropriated for the state department of public welfare and specified for any account or purpose and not needed for such account or purpose may be transferred by the state board of public welfare to any other account or purpose under

the authority of the department, except that no transfer from items (a), (b), (c), (d), (e) or (f) shall be transferred to item (g), administrative costs."

This provision permits the state board to transfer any part of the specific appropriations for (a) old age assistance, (b) aid to needy dependent children, (c) aid to needy blind, (d) child welfare services, or (f) general relief, not needed for any one of such accounts to any of the others except (g) administrative costs. As to the appropriation under subsection (e), however, the Supreme Court in the case of *State ex rel. Lewis and Clark County v. State Board of Public Welfare*, 112 Mont. 308, 117 Pac. (2nd) 259, held no transfer could be made from this account to any other for the reason that, when the board appropriated this specific appropriation as directed, its authority over the appropriation ceased.

It is therefore my opinion:

First, the county commissioners may lawfully declare emergencies under the provisions of Section 4613.6, Revised Codes of Montana, 1935, and issue emergency warrants for relief purposes without submitting the question to a vote of the electors.

Second, the State Board of Public Welfare may transfer any funds not needed for the purposes of (a) old age assistance, (b) aid to needy dependent children, (c) aid to needy blind, or (d) child welfare services to (f) general relief.

Third, when the income of the poor fund from a six mill levy, and all other sources, is insufficient for expenditures of the poor fund for any fiscal year and when the county has issued anticipatory warrants as authorized by law and has issued emergency warrants as authorized by Section 4613.6, Revised Codes of Montana, 1935, in an amount which may reasonably be anticipated can be paid from the anticipated revenue for the poor fund for the succeeding fiscal year and leave sufficient for mandatory expenditures for such succeeding fiscal year, the county is entitled to a grant-in-aid from state funds, under the provisions of Section IX, Part II, Chapter 82, Laws of 1937, as amended by Section 14, Chapter 129, Laws of 1939, and Section 7, Chapter 117, Laws of 1941.

Sincerely yours,

JOHN W. BONNER
Attorney General