

excess of ten percent more than was expended by such department during the previous fiscal year.

Chapter 98, Laws of 1937 provides in part:

“ . . . the amount appropriated and authorized to be expended for any item contained in such budget, except for capital outlay, election expenses, expenditures from county poor funds, and payment of emergency warrants and interest thereof, must not exceed by more than ten per centum (10%) the amount actually expended for such item under the appropriation contained in the budget approved and adopted for the fiscal year immediately preceding, and the total amount appropriated and authorized to be expended from any fund, except for capital outlay, election expenses and payment of emergency warrants and interest thereon, shall not exceed by more than ten per centum (10%) the total amount actually expended for all purposes, except for capital outlay, election expenses, expenditures from county poor funds, and payment of emergency warrants, from such fund under the appropriation made from such fund in the budget approved and adopted for the fiscal year immediately preceding . . . ”

Opinion No. 92.

Counties—Budgets—County Commissioners—Health Department, County.

Held: A board of county commissioners cannot, under the restrictions imposed by Chapter 98, Laws of 1937, appropriate and authorize expenditure by a county health department of an amount in excess of ten percent more than was expended by such department during the previous fiscal year.

July 23, 1943.

Mr. John D. Stafford
County Attorney
Cascade County
Great Falls, Montana

Dear Mr. Stafford:

You have asked if the board of county commissioners, in setting up the budget for Cascade County, may appropriate to and authorize to be expended by the Cascade county health department and detention hospital an amount in

The portion of the statute above quoted is plain and unambiguous. Hence, it speaks for itself. No interpretation is necessary. (*Vaughn & Ragsdale Company v. State Board of Equalization et al.*, 109 Mont. 52, 59, 60, 96 Pac. (2nd) 420, 423, 424.)

The Twenty-Eighth Legislative Assembly met in Helena in regular session during January and February of this year; and—although that body was also aware the present war might possibly bring additional demands upon the county government—it did not amend or alter in any way Chapter 98, Laws of 1937. In view of that, it must be assumed the legislative assembly considered Chapter 98 still adequate to meet the demands of county government.

In the event the board of county commissioners determines the maximum budget for said department should be increased, it may increase such budget ten per cent over the total amount expended during the previous fiscal year. Then if and when said budget is exhausted, an emergency will

confront the board of county commissioners, and, in its sound discretion, it may invoke the emergency powers and authorize emergency expenditures for the immediate preservation of the public health of the county, as provided in Section 4613.6, Revised Codes of Montana, 1935, as amended by Chapter 170, Laws of 1943.

It is my opinion a board of county commissioners may not, under the restrictions imposed by Chapter 98, Laws of 1937, appropriate and authorize expenditure by a county health department of an amount in excess of ten per cent more than was expended by such department during the previous fiscal year. Upon the exhausting of the appropriation for such purpose, and the board of county commissioners in their sound discretion finding an emergency exists, they may under Section 4613.6, Revised Codes of Montana, 1935, as amended by Chapter 170, Laws of 1943, declare an emergency by resolution, and make the expenditure or incur liabilities necessary for the immediate preservation of the public health of their county.

Sincerely yours,
R. V. BOTTOMLY
Attorney General