

Opinion No. 108

**Cities and Towns—Counties—City-
County Health Department—
Warrants, Emergency.**

Held: Emergency warrants may be issued by a county or city for the purpose of continuing the operation of a City-County Health Department when the operation of the isolation hospital, ordered by the State Board of Health, is in danger

of being discontinued. Before such warrants are issued a resolution must be adopted by the governing body of the city or county by the unanimous vote of all members present at any meeting, the time and place of which all members shall have had reasonable notice, stating the facts constituting the emergency and entering the same upon their minutes.

In the case of emergency expenditures by cities, the resolution must also contain an estimation of the amount required to be expended and the fund against which emergency warrants are to be issued.

April 10, 1948

Mr. Truman G. Bradford
County Attorney
Cascade County
Great Falls, Montana

Dear Mr. Bradford:

You have requested my opinion concerning the duties and obligations of the City of Great Falls and Cascade County to maintain and support a merged city-county health department.

You advise me that a contract was entered into between the city and county whereby each would pay one-half the expenses of the Health Department. You also inform me that the city failed to appropriate sufficient money to meet its one-half of the expenses by the sum of \$10,000.

The authority for creating a city-county health department is found in Section 5, Chapter 171, Laws of 1945, which sanctions such joint health unit for counties and cities of the first class. The expenses of maintenance are shared as agreed upon by governing bodies of the county and city. Under the facts you submit, the expenses are to be paid equally by the county and city as set out in the written contract.

Section 2469, Revised Codes of Montana, 1935, provides, in part:

"Towns, cities, and counties must

establish and maintain such isolation hospitals when directed so to do by the State Board of Health, and for this purpose they may secure, by purchase or otherwise, suitable building sites, and cities, towns and counties may combine for the purpose of building, equipping, and maintaining such hospitals."

The establishment of an isolation hospital is mandatory if the State Board of Health orders such a hospital and your letter states such direction was given. The funds now needed for the health department, you advise, are in great part necessary for the continued operation of the isolation hospital.

Since the city did not meet its contractual obligation to pay one-half of the cost of maintenance of the health unit, it is necessary to examine its power to meet this emergency. Section 5083.8, Revised Codes of Montana, 1935, as amended by Chapter 53, Laws of 1943, authorizes emergency expenditures. This section, as a general rule, permits expenditures in a public emergency only when the necessity could not reasonably have been anticipated at the time of making the budget. However, the statute authorizes emergency expenditures without the restriction that the emergency could not be foreseen in certain enumerated emergencies, one of which is to meet mandatory expenditures required by law, or immediate preservation of public health. An adoption of a resolution by unanimous vote of all members of the council present is necessary for the issuance of such emergency warrants. As was previously pointed out, it is a mandatory duty of the city to maintain an isolation hospital, and the failure of the council to provide in the budget for the expenses of the city's portion does not relieve the city of this duty, or preclude the issuance of such warrants.

It is not necessary to determine whether the limitation of twenty-five per cent upon the total of all emergency budgets to be paid from any city fund (Chapter 53, Laws of 1943) applies under the facts given as the amount to be raised will not approach such limitation.

If the city of Great Falls fails to fulfill its contract Cascade County will not be relieved of its duty to provide for the continued operation of the isolation hospital. While this would result in an unnecessary burden being placed upon the county, the county would have a right of reimbursement from the city upon its contract. The method of issuing emergency warrants by the county is found in Section 4613.6, Revised Codes of Montana, 1935, as amended by Chapter 170, Laws of 1943. This section also authorizes the issuance of emergency warrants to meet mandatory expenditures required by law or for the immediate preservation of public health, upon adoption by the board of county commissioners, by unanimous vote of the members present at any meeting, the time and place of which all the commissioners shall have had reasonable notice, of a resolution stating the facts constituting the emergency and the estimated amount of money required to meet such emergency, and entering the same upon their minutes.

It is, therefore, my opinion emergency warrants may be issued by a county or city for the purpose of continuing the operation of a City-County Health Department when the operation of the isolation hospital, ordered by the State Board of Health, is in danger of being discontinued. Before such warrants are issued a resolution must be adopted by the governing body of the city or county by the unanimous vote of all members present at any meeting, the time and place of which all members shall have had reasonable notice, stating the facts constituting the emergency and entering the same upon their minutes.

In the case of emergency expenditures by cities, the resolution must also contain an estimation of the amount required to be expended and the fund against which emergency warrants are to be issued.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General