

Opinion No. 140**County Commissioners — Garbage
Fund — Budget — Contracts
County Clerk**

- Held:** 1. The Garbage Fund is liable only for the payment under the contract of an amount for any fiscal year within the budget appropriation.
2. The county board has no authority to approve and order paid claims out of the budget of the current fiscal year for indebtedness incurred in the prior fiscal year, — nor may the clerk draw warrants for such payment.

September 27, 1948

Board of County Commissioners
Silver Bow County
Butte, Montana

Gentlemen:

You have submitted to this office the question as to your authority to pay claims submitted against the Garbage Fund, a special fund, out of the 1948-1949 Budget for services performed under contract prior to the fiscal year 1948-1949.

The claims in question arise out of a contract entered into for the disposal of garbage within a duly created garbage district, under authority of Section 4465.28, Revised Codes of Montana, 1935, as amended by Chapter 108, Laws of 1947. The contract was for a period of three years, payments thereunder were for a stated

amount monthly. The tax provided by statute was duly levied each year, and the money received therefrom placed in the special garbage fund. I am informed that, due to the fact that insufficient money was received from the tax levy, there occurred a deficit each year, and hence, each year this deficit was carried over into the next fiscal year. The three year period for which the contract was entered into has now expired, and the accumulated claims remain unpaid.

I am informed that when this contract was entered into there was a balance in the Garbage Fund which was subsequently applied to an indebtedness on a previous contract for garbage disposal. The present contract contains a clause to the effect that the monthly payments as provided therein are payable only "whenever there is sufficient money in the fund." It further appears that when this contract was entered into in 1945, the maximum levy permitted under Section 4465.28, Revised Codes of Montana, 1935, was three mills. In 1947, this section was amended by Chapter 108, Laws of 1947, increasing this levy to five mills. It is a fact that one of the causes of the delinquency in this fund was that the three mill levy did not produce sufficient revenue to take care of the cost of garbage removal. However, under the five mill levy, the facts disclose, that, due to increased valuation and less tax delinquencies, the fund has progressively increased, so that it can reasonably be contemplated that the present authorized levy will, in time, be sufficient to pay the indebtedness now existing against the fund and take care of current costs, providing current levies can be used to pay claims of prior fiscal years.

The question for solution then is whether or not the claims for past indebtedness under the facts here existing may be paid out of current revenue — that is revenue accruing to the Garbage Fund from the five mill levy for the current fiscal year, 1948-1949?

In the solution of this question we must be governed by the provisions of the County Budget Act, (Sections 4613.1 to and including Section

4613.10, Revised Codes of Montana, 1935), and the well established rule of law that a board of county commissioners has only such power and authority as is given it by a statute, or such as is necessarily implied therefrom.

The Budget Act makes specific provisions for the manner in which the financial business of the county is to be conducted for the fiscal year. After the submission of the estimated requirements of expenditures by each department, and after consideration by the board of such estimates so submitted, and after an opportunity is given the taxpayers to object to any item of contemplated expenditure, the board must specify the amount of expenditure to be permitted from each fund for each specific purpose. The board then fixes the levy for each fund. The Act then provides, (Sec. 4613.5, Revised Codes of Montana, 1935),

"The estimates of expenditures, itemized and classified as required in section 4613.2, and as finally fixed and adopted by said board of county commissioners, shall constitute the appropriations for the county for the fiscal year intended to be covered thereby, and the county commissioners, and every other county official shall be limited in the making of expenditures or incurring of liabilities to the amount of such detailed appropriations and classifications. . . ."

It will be noted that this contract was entered into in May of 1945, prior to the adoption of the budget for the fiscal year 1945-1946. At that time the authorized levy for garbage collection was three mills, (Sec. 4465.28, Revised Codes of Montana, 1935). Based upon the valuation of the property within the district to be served, this levy would produce the sum of \$13,500.00, providing one hundred per cent collections were made.

The contract provided for a payment of \$16,908.00 per year, payable in twelve equal monthly instalments during the life of the contract, which presumably was for the period May, 1945 to May, 1948. It is clear from these facts then, that even with a one hundred percent collection, the li-

ability incurred under this contract was some three thousand dollars in excess of the possible revenue to accrue to the fund under the authorized levy.

When this contract was entered into in 1945, the board had authority to enter into a contract for the collection of garbage within an organized district for a period of three years and to levy not to exceed three mills on the taxable valuation of the property within the district. This levy was increased to five mills. (Chapter 108, Laws of 1947). However, because of the restrictions of the Budget Act (Sec. 4613.5, Revised Codes of Montana, 1935), the board had no authority to incur an indebtedness against this fund in excess of the amount which it could be estimated the authorized levy would produce.

In view of the fact that the board had authority to enter into a contract for the disposal of garbage for a period of three years, I am inclined to believe that the present contract was legal to the extent of the amount appropriated for that purpose within the special fund each fiscal year, but illegal as to the excess.

It appears that there was a deficit each year of the contract. This was due to some extent to the fact that the authorized levy did not bring in sufficient money to the fund. However, the board would have authority, and in fact it became its duty to approve claims against the fund up to the amount appropriated in the budget. In the event there were not sufficient funds to pay any warrant drawn within this limit, it was the duty of the county treasurer, upon presentation of such warrant for payment, to register the same. These registered warrants then would be carried into the next fiscal budget, and each succeeding year until paid.

The question, however, more pertinent here is as to whether or not the board, under the facts, may approve claims for payment under the contract accruing in prior years and the clerk legally draw warrants for the payment of the same from the current fiscal budget.

From a review of the authorities

on these question, I am compelled to answer both in the negative.

Thus, in the case of *Shouse v. Board of County Commissioners*, 151 Kan. 458, 99 Pac. (2d) 779, 783, 785, the Supreme Court of Kansas in dealing with statutes similar to our Budget Act, said:

"The theory of the budget law is plain. The budget must be properly itemized and classified by funds,—the levy must be made according to the various items in the budget as published, and when filed shall operate as an appropriation for each individual fund. The revenues are to be itemized and classified by funds, and are thus earmarked for a particular purpose. When so segregated the statute declares the funds 'shall not be used for any other purpose.' In effect the revenues so itemized and classified become a trust fund to be applied to the purpose for which it was allocated.

"In the face of the explicit language of the budget law, it would be difficult to justify the action of the board in diverting the funds in the 1938 budget to the liquidation of the outstanding obligations of the year 1937, or in issuing warrants on one fund to pay any other items or obligations. . . .

"The action of the board in paying the 1937 obligations out of the 1938 budget funds, finds no justification in the statutes. If the payment of claims not included in the budget is to be held within the power of the board, there is nothing to prevent the board from using all moneys on hand for the payment of any indebtedness, thus defeating the purpose of both the budget law and of the cash-basis law. For if the revenues allocated to the specific items in the budget may be used to pay obligations not in the budget, and the unpaid items in the budget are to stand as valid obligations the board is permitted to do indirectly what it cannot do directly. . . ."

See also the following cases:
Refsnes, et al v. Oglesby, 73 Pac. (2d) 90 (Kans.)
 In re Protest of Chicago R. I.

& P. Ry. Co., 2 Pac. (2d)
279 (Okla.)
City of Phoenix v. Kidd, 92
Pac. (2d) 513 (Ariz.)

It might be suggested that because of the provision in the contract that the monthly payments could be paid "whenever there was sufficient in the fund," the contract did not "incur a liability in excess of the appropriation." However, if such phrase might be interpreted to mean this, still the county would be liable only for the budget appropriation and no more, which is the same result I have reached in this opinion.

In view of the fact that the county here, or rather the District, received the benefit of the service, on authority of the case of First National Bank v. Valley County, 112 Mont. 18, 113 Pac. (2d) 783, in which recovery was had against Valley County on the theory of unjust enrichment, the contractor in this instance might be entitled to a recovery against the county, regardless of the Budget restrictions. On this question, however, I do not pass.

It is, therefore, my opinion that:

1. The Garbage Fund is liable only for the payment under the contract of an amount for any fiscal year within the budget appropriation.
2. The county board has no authority to approve and order paid claims out of the budget of the current fiscal year for indebtedness incurred in the prior fiscal year,—nor may the clerk draw warrants for such payments.

Sincerely yours,
R. V. BOTTOMLY
Attorney General