

**Opinion No. 44.**

**Budgets—Warrants Issued in Excess  
of Appropriations—Cemetery  
Districts—Void Warrants.**

HELD: Warrants issued by a cemetery district in excess of appropriations in the budget for any one fiscal year are not liabilities of the cemetery district and cannot be paid from funds in

a subsequent budget. Interest cannot lawfully be paid on warrants which are not valid claims against either the county or a cemetery district.

September 28, 1953.

Mr. R. E. Towle  
State Examiner  
Capitol Building  
Helena, Montana

Dear Mr. Towle:

You requested my opinion concerning the legality of the fiscal management of a cemetery district. It appears from your request and a letter of the County Attorney of Glacier County that the entire county was established as a cemetery district. There is no record of budgets to cover the full period since the establishment of the district. However, budgets for two fiscal years were submitted, both of which show outstanding warrants from the previous year. The examination by your office in March, 1953, revealed that warrants were outstanding and unpaid in the amount of \$54,000 and also that interest had been paid on some of these outstanding and unpaid warrants.

In considering the problem presented it is important to note that Section 9-209, R. C. M., 1947, as amended by Chapter 93, Laws of 1951, provides as follows:

"The board of cemetery trustees shall annually present a budget to the board of county commissioners at the regular meetings as prescribed by law. The board of county commissioners must annually, at the time of levying county taxes, fix and levy upon all property within said cemetery district, sufficient to raise the amount certified by the board of cemetery trustees to be raised by a tax on the property of said district. The tax so levied shall not exceed two (2) mills on each dollar of taxable valuation on the property of said district."

The above quoted statute makes it the duty of the trustees of the cemetery district to submit a proposed budget to the board of county commissioners,

and they must fix a levy of not to exceed two mills. Also, under the general county budget law, it is provided in Section 16-1901, R. C. M., 1947, as follows:

"On or before the first day of June of each year the county clerk and recorder of each county shall notify in writing each county official, elective or appointive, in charge of an office, department service or institution of the county to file with such county clerk and recorder, on or before the tenth day of June following, detailed and itemized estimates, both of the probable revenues from sources other than taxation, and of all expenditures required by such office, department, service or institution for the next succeeding fiscal year."

This provision of the budget law is comprehensive and contemplates that every office, department, service or institution of this county shall come within and be bound by the county budget system.

Section 9-210, R. C. M., 1947, specifically brings the operations of a cemetery district under the general laws relating to fiscal matters, as the section states in part:

"... The procedure of the collecting of the tax and the distribution of the funds shall be in accordance with the existing laws of the State of Montana."

However, this section must be read in conjunction with Chapter 94, Laws of 1951, which allocates the proceeds of a levy not to exceed two mills to each cemetery district and directs that the funds be paid to the cemetery district.

It must be concluded that a cemetery district operates under a budget and is controlled by the applicable county budget act. The amount available from taxation is limited to a two mill tax on the area of the district.

Our county budget system as set forth in Chapter 19 of Title 16, R. C. M., 1947, is more than a plan of estimating the expenditures and income. The mandatory provision of Section 16-1906, R. C. M., 1947, is specific and curbs spending beyond the income. This section reads as follows:

" . . . Expenditures made, liabilities incurred, or warrants issued, in excess of any of the budget detailed appropriations as originally determined, or as thereafter revised by transfer, as herein provided shall not be a liability of the county, but the official making or incurring of such expenditure or issuing such warrant shall be liable therefor personally and upon his official bond . . . "

Courts of other states have considered budget systems similar to ours. In *Kistler vs. Corbin County*, 154 Pa. Super. 299, 35 A. (2d) 733, the Pennsylvania court said:

"A budget, under the Act, is more than a mere estimate of probable revenues and expenditures. It is a method whereby expenditures are controlled and limited during the fiscal period by designating the amounts of money legally at the disposal of the commissioners, and the purposes for which they may be expended. Construing similar legislation applicable to cities of the first class, it was held that such a provision is not merely directory, but that it is in the highest degree mandatory."

The South Dakota statute which established a budget system for counties made provision for funding the floating indebtedness outstanding. In the case of *Rowe vs. Stanley County*, 52 S. D. 516, 219 N. W. 122, the court said:

"The budget system is a system 'by which income and expenditure for a definite period are to be balanced.' It is obvious at once that in South Dakota there can be no county budget law in this sense while there is an outstanding warrant indebtedness, for R. C. § 6973, provides that all county warrants must be paid in the order of their presentation; Section 6975 provides that where there are no funds for the payment of such warrants on presentation, the treasurer shall register the warrants, indorsed, 'Not paid for want of funds;' and Section 6976 provides that all registered warrants shall be paid in the order of their registration. It is thus seen that as soon as the income provided for by the budget comes into

the hands of the county treasurer, he must pay it out on the outstanding warrants in the order of their registration, instead of applying it on the expenditures provided in the budget, and so the budget system is at once "knocked into a cocked hat" by the priority of the outstanding warrants. It is thus plain that the budget system in the true sense is unattainable where there is an outstanding floating indebtedness, which, like county warrants under the statutes of this state, must be paid in the order of their presentation."

As concisely stated by the South Dakota Court, "The budget system is knocked into a cocked hat by the priority of outstanding warrants." While there are several instances when the issuance of warrants in excess of revenue is authorized by law, the most frequent is in the event of an emergency budget, yet such an occurrence is the exception and spending in excess of appropriation is never sanctioned. The anticipated revenue for the use of a budget is a limitation on the amount of expenditures and this is stated in Section 16-1904, R. C. M., 1947, in the following language:

"The total expenditures authorized to be made from any fund . . . shall not, in any event, exceed the aggregate of the cash balance in such fund at the close of the fiscal year immediately preceding, the amount of estimated revenues to accrue to such fund, as determined and fixed in the manner herein provided, and the amount which may be raised for such fund by a lawful tax levy during the fiscal year."

As a general rule of law, a public corporation is limited in its power to expend money by its income and this rule is well stated in *Barrow vs. Bradley*, 190 Ky. 480, 277 S. W. 1016, where the court said:

"That the power of a city to expend or contract to pay public revenues is limited by the power to tax is too obvious for argument."

From the foregoing it must be concluded that the appropriations in a cemetery district budget are limited by

the revenue from the tax and any operational income from the cemetery. Budgets from previous years were not submitted and a breakdown of the outstanding warrants showing the amounts and dates as related to appropriations was not given. However, it is obvious that the warrants were not paid because expenditures were made in excess of both income and appropriations and such warrants are not valid and the provisions of Section 16-1906, R. C. M., 1947, have direct application.

Because the warrants issued in previous fiscal years exceeded the appropriations in the budget and are invalid, such warrants cannot be paid out of funds of the current budget. In Opinion No. 140, Volume 22, Report and Official Opinions of the Attorney General, a similar situation was considered and like conclusions reached.

The absence of statutory authority for a county or cemetery district to issue bonds precludes the funding of the warrants, if we were to assume the warrants to be valid. In *Dietrich vs. City of Deer Lodge*, 124 Mont. 8, 218 Pac. (2d) 708, Chief Justice Adair said:

“A municipal corporation may not issue bonds under an implied power; it must have express power therefor.”

It is therefore my opinion that warrants issued by a cemetery district in excess of appropriations in the budget for any one fiscal year are not liabilities of the cemetery district and cannot be paid from funds in a subsequent budget.

It is also my opinion that interest cannot lawfully be paid on warrants which are not valid claims against either the county or a cemetery district.