

are validated and ratified under and by virtue of Chapter 4, Laws of 1955.

Outstanding warrants may be paid from cemetery district funds on hand which are not appropriated for other purposes.

May 25, 1955.

Mr. Dan S. Welch
County Attorney
Glacier County
Cut Bank, Montana

Dear Mr. Welch:

You have requested my opinion concerning the effect of Chapter 4, Laws of 1955, on the payment of warrants issued by a cemetery district in your county in excess of the budget for the cemetery district. You have also asked if the money on hand in the cemetery fund, which is in excess of that needed for the current budget, may be applied to the payment of outstanding warrants.

As you will recall, this office issued an opinion (Opinion No. 44, Volume 25, Report and Official Opinions of the Attorney General) relative to the cemetery district budget in your county, in which opinion it was 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.”

After the above opinion was rendered, the Montana Legislature passed Chapter 4, Laws of 1955, which was approved by the Governor February 1, 1955, which statute reads in part as follows:

“All warrants heretofore issued by any cemetery district for services actually rendered or goods, wares, merchandise or material actually furnished to said cemetery district are hereby validated, ratified, approved and confirmed, notwithstanding any lack of power of such cemetery district to authorize

Opinion No. 14

Cemetery Districts — Validation of Warrants of Cemetery Districts — Budget Laws.

HELD: Warrants issued by any cemetery district for services, goods, wares, merchandise, and material furnished to said cemetery district

or issue such warrants by reason of noncompliance with any budget act or their being in excess of any cemetery district budget or because of failure to include provision for the same in any cemetery district budget or otherwise and said warrants so issued for value received by said cemetery district shall be binding, legal, valid and enforceable obligations of such cemetery district."

Many such validating statutes have been enacted in Montana. Our Supreme Court considered a bond validating act in the case of *Weber vs. City of Helena*, 89 Mont. 109, 297 Pac. 455, where the court first considered the validity of city bonds which were sought to be issued after an election that was not held in conformity with the statutory procedure. The court held that the failure to make any attempt to comply with applicable statutes in the conduct of the election rendered the election void. After this conclusion was reached by the court, the legislative assembly passed a validating act ratifying and confirming the bonds which were to be issued as a result of the election. The court said of this validating act:

"Even where there was no authority for the issue of bonds by a municipal corporation, the legislature may subsequently ratify and validate whatever it might constitutionally have authorized in the first instance . . ."

Approval to the conclusion reached in the *Weber* case was given by our Supreme Court in *Commonwealth Public Service Company vs. City of Deer Lodge*, 96 Mont. 48, 29 Pac. (2d) 667, where it was stated:

"The legislature of a state may ratify any Act of a municipal corporation which it could have authorized . . ."

The Supreme Court of Utah in *Daggett vs. Lynch*, 18 Utah 49, 54 Pac. 1095, considered the effect of a validating act on warrants which had been issued in excess of a statutory debt limitation imposed upon the county. The court stated with respect to the validating act:

" . . . The legislature possessed the power, when the warrant was issued, to raise the debt limit; and,

the warrant having been issued in excess of that limit, the legislature might validate it. An act of a county void for want of authority may be validated by the legislature if it had the power before the void act was done to authorize it."

The above quoted is particularly pertinent when it is remembered that the opinion of this office held the cemetery district warrants in question were not liabilities of the cemetery district, because of the budgetary limitation imposed by statute. As the legislature had the authority to prescribe the limits of a budget for a cemetery district, it also had the authority to raise this limit if it thought such course was justified. The Utah Court recognized that if the legislature might have authorized the issuance of the warrants in the first instance, then there was the power to validate warrants issued in excess of a statutory limitation.

A similar validating statute is Chapter 170, Laws of 1949, which authorized the payment of indebtedness incurred in good faith for the collection of garbage, which indebtedness exceeded the county budget law.

The answer to your second question is found in Section 3 of Chapter 4, Laws of 1955, which reads as follows:

"All cemetery district warrants validated, ratified, approved and confirmed by the provision of this act shall be paid by the cemetery district which issued the same from any funds which the cemetery district may have on hand which are not appropriated for other purposes.

It is therefore my opinion that warrants issued by any cemetery district for services, goods, wares, merchandise, and material furnished to said cemetery district are validated and ratified under and by virtue of Chapter 4, Laws of 1955.

It is also my opinion that outstanding warrants may be paid from cemetery district funds on hand which are not appropriated for other purposes.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.