

COUNTY OFFICERS AND EMPLOYEES - Authority of county treasurer to register unpaid hospital district warrants;
HOSPITALS - Power of hospital district to borrow money by use of promissory note;
HOSPITALS - Power of hospital district to lease hospital facility to nonprofit corporation without restricting corporation's right to borrow money;
HOSPITALS - Procedure for registering unpaid hospital district warrants;
PUBLIC FUNDS - Authority of county treasurer to register unpaid hospital district warrants;
PUBLIC FUNDS - Power of county to register as county warrants, and then purchase, unpaid hospital district warrants;
PUBLIC FUNDS - Power of hospital district to borrow money by use of promissory note;
PUBLIC FUNDS - Procedure for registering unpaid hospital district warrants;
MONTANA CODE ANNOTATED - Sections 7-6-2601, 7-6-2603, 7-6-2701, 7-34-2115, 7-34-2122, 7-34-2131(1), 7-34-2137, 17-5-101, 17-5-102;
MONTANA CONSTITUTION - Article XI, section 4;
MONTANA LAWS OF 1985 - Chapter 92;
MONTANA LAWS OF 1969 - Chapter 257, section 8;
MONTANA LAWS OF 1953 - Chapter 155, section 8;
OPINIONS OF THE ATTORNEY GENERAL - 43 Op. Att'y Gen. No. 70 (1990), 42 Op. Att'y Gen. No. 111 (1988), 40 Op. Att'y Gen. No. 17 (1983), 37 Op. Att'y Gen. No. 14 (1977), 36 Op. Att'y Gen. No. 88 (1976), 27 Op. Att'y Gen. No. 40 (1957);
REVISED CODES OF MONTANA, 1947 - Section 16-4308.

- HELD: 1. The unpaid warrants of a hospital district may not be registered as county warrants and purchased by the county in which the hospital district is located.
2. A hospital district does not have authority to borrow money from a commercial lending institution by use of a promissory note.
3. A hospital district's board of trustees may enact an appropriate resolution directing the county treasurer, as ex officio treasurer of the district, to register unpaid hospital district warrants, to redeem them in the order of their registration, and to pay a particular rate of interest on unpaid warrants.
4. A hospital district may lease a district-owned hospital facility to a nonprofit corporation without restricting the right of the corporation, as an entity independent from the hospital district, to borrow money from a commercial lending institution for the purpose of running the hospital.

August 14, 1990

Thomas J. Sheehy
Chouteau County Attorney
P.O. Box 518
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Dear Mr. Sheehy:

You have requested my opinion on four issues which I have rephrased as follows:

1. May the unpaid warrants of a hospital district be registered as county warrants pursuant to sections 7-6-2601 and 7-6-2603, MCA, and then purchased by the county in which the hospital district is located pursuant to section 7-6-2701, MCA?
2. May a hospital district borrow money from a commercial lending institution by use of a promissory note?
3. May warrants of a hospital district that are presented to the county treasurer for payment and that are unpaid for want of funds be registered as unpaid hospital district warrants by the county treasurer, and if so what procedure should be followed?
4. May a hospital district lease a hospital facility owned by it to some other entity such as a nonprofit corporation, with that other entity then borrowing money from a commercial lending institution for the purpose of running the hospital?

These questions arise from the concern of the Chouteau County Commissioners with financing the indebtedness of a local hospital district which owns and operates a hospital in Fort Benton. One proposal for financing the district's indebtedness of approximately \$95,000 contemplates registering the district's unpaid warrants in accordance with sections 7-6-2601 and 7-6-2603, MCA, which govern the registration of county warrants. It is suggested that the county could then invest surplus county funds in the district's unpaid warrants pursuant to section 7-6-2701, MCA. In the alternative, the trustees of the hospital district propose financing the debt by borrowing money from a local bank under the terms of a promissory note.

To answer your first question, it must be determined whether the Chouteau County Commissioners may authorize the registration of the hospital district's warrants as county warrants, thereby making them eligible for investment of

surplus county funds under section 7-6-2701, MCA. Because Chouteau County is a county with general government powers, it has only those powers expressly or implicitly granted it by the Legislature. Mont. Const., Art. XI, § 4; D & F Sanitation Service v. City of Billings, 219 Mont. 437, 445, 713 P.2d 977, 982 (1986); 40 Op. Att'y Gen. No. 17 at 63 (1983); 42 Op. Att'y Gen. No. 111 at 425 (1988). Furthermore, statutes which authorize the transfer of idle public funds as a loan into another public fund must be "strictly construed and not extended beyond their plain terms." 15 McQuillin, Municipal Corporations § 39.50 (3d ed. 1985).

Registration of county warrants is expressly controlled by sections 7-6-2601 and 7-6-2603, MCA, which provide in pertinent part:

7-6-2601. Details related to county warrants. (1) Warrants issued pursuant to 7-6-2202(1) shall be signed by the county clerk and the chairman of the board of county commissioners, except warrants drawn on the redemption fund.

(2) All warrants issued by the county clerk during each year, commencing with the first Monday in January, must be numbered consecutively. The number, date, and amount of each and the name of the person to whom payable and the purpose for which drawn must be stated thereon; and the warrants must, at the time they are issued, be registered by him.

....
7-6-2603. Registration of warrants. (1) If the fund is insufficient to pay any warrant, it must be registered and thereafter paid in the order of its registration.

Section 7-6-2601, MCA, refers to section 7-6-2202(1), MCA, which provides in pertinent part:

The county clerk must draw warrants on the county treasury in favor of all persons entitled thereto in payment:

(a) of all claims and demands chargeable against the county which have been legally examined, allowed, and ordered paid by the board of county commissioners[.]

Pursuant to section 7-6-2701, MCA, a county is expressly authorized to invest surplus funds in registered county, municipal, or school district warrants:

(1) [I]f a county has under its control any money for which there is no immediate demand, in any special fund subject to deposit, which in the judgment of the board of county commissioners it would be advantageous to invest in county, municipal, or school district registered warrants, the county

commissioners are authorized in their discretion to direct the county treasurer to purchase such warrants of entities located in the same county.

....

(4)(a) A school district or county warrant presented to the county treasurer for purchase by the county must be registered as any other school district or county warrant. [Emphasis added.]

Thus, in order for a warrant to qualify as a registered, unpaid county warrant which may be purchased by a county pursuant to section 7-6-2701, MCA, the warrant first must be drawn by the county clerk after having been examined, allowed, and ordered paid by the board of county commissioners, and then properly registered by the county clerk.

In contrast, the warrants of a hospital district are issued by order of the district's board of trustees, § 7-34-2137(2), MCA, which is empowered by statute to govern the district, §§ 7-34-2115, 7-34-2122, MCA. It is thus clear that hospital district warrants are never "examined, allowed, and ordered paid by the board of county commissioners" pursuant to section 7-6-2202, MCA, a step which is required before a warrant can be registered as a county warrant pursuant to sections 7-6-2601 and 7-6-2603, MCA. Because the Legislature has authorized counties to invest only in county, municipal, or school district registered warrants, I conclude that county commissioners are not authorized to invest surplus county funds in the unpaid warrants of a hospital district. My conclusion is bolstered by consideration of the recent legislative history of section 7-6-2701, MCA. Prior to 1985, that statute only permitted investment of surplus county funds in unpaid county warrants. In 1985, section 7-6-2701, MCA, was amended to permit such investment in the registered warrants of school districts and municipalities, in addition to registered county warrants. 1985 Mont. Laws, ch. 92. The purpose of the 1985 amendment was to broaden the class of registered warrants which a county could purchase in order to assist financially troubled school districts and municipalities. Minutes of House Local Government Committee, January 15, 1985; Minutes of Senate Local Government Committee, March 5, 1985. The Legislature has thus expressly enumerated those entities that may benefit from the county's largess under section 7-6-2701, MCA, and hospital districts are not included on the list. The express mention of one matter excludes other similar matters not mentioned. 82 C.J.S. Statutes § 333 at 668.

With regard to your second question, it is important to note that a hospital district, as an entity created by authority of statute, §§ 7-34-2101 to 2164, MCA, has only those powers "expressly conferred upon it by statute and such as [are] necessarily implied in the exercise of that authority conferred." 36 Op. Att'y Gen. No. 88 at 501 (1976); 37 Op. Att'y Gen. No. 14 at 54 (1977). The Legislature first provided for the creation of hospital districts in 1953. 1953 Mont. Laws, ch. 155. While chapter 155 specifically enumerated the

powers of a hospital district, there was no grant of authority permitting hospital districts to borrow money. 1953 Mont. Laws, ch. 155, § 8, codified as section 16-4308, R.C.M. 1947; see also 27 Op. Att'y Gen. No. 40 at 87 (1957) (hospital district has no power or authority to issue bonds, securities or obligations in the form of promissory note or mortgages). However, in 1969 the Legislature amended section 16-4308, R.C.M. 1947, to authorize a hospital district to borrow money by issuing bonds. 1969 Mont. Laws, ch. 257, § 8. That authority has been preserved and is currently codified in sections 7-34-2122(8) and 7-34-2131(1), MCA, which provide as follows:

7-34-2122. Powers of district. A hospital district shall have all powers necessary and convenient to the acquisition, betterment, operation, maintenance, and administration of such hospital facilities as its board of trustees shall deem necessary and expedient. Without limitation on the foregoing general grant of powers, a hospital district, acting by its board of trustees, may:

....
(8) borrow money and issue bonds as hereinafter prescribed[.]

7-34-2131. Hospital district bonds authorized. (1) A hospital district may borrow money by the issuance of its bonds to provide funds for payment of part or all of the cost of acquisition, furnishing, equipment, improvement, extension, and betterment of hospital facilities and to provide an adequate working capital for a new hospital.

Section 7-34-2131(1) MCA, is the only provision in the statutes governing hospital districts which prescribes a method by which such districts are authorized to borrow money. Thus, the Legislature has expressly prescribed that the exclusive process by which a hospital district may borrow money to acquire, operate, and improve hospital facilities is through issuance of its bonds. I conclude that sections 7-34-2122(8) and 7-34-2131(1), MCA, cannot be construed as a grant of authority to hospital districts to borrow money by use of a promissory note. See 36 Op. Att'y Gen. No. 88 at 503 (1976).

Regarding your third question, the controlling statute does not expressly provide for the registration of unpaid hospital district warrants:

The funds collected under the tax levy shall be held by the county treasurer, who shall be, ex officio, the treasurer for the hospital district, and such treasurer shall keep a detailed account of all tax money paid into the fund, of all other money from any source received by the district, and of all payments and disbursements from the fund. Funds shall be paid out on warrants issued by direction of the board of trustees, signed by a majority of its membership.

§ 7-34-2137(2), MCA. However, this provision does clearly direct the county treasurer, as ex officio treasurer for the district, to "keep a detailed account of ... all payments and disbursements from the fund[,] including warrants, which are simply "funds ... paid out ... by direction of the board." Further, as ex officio treasurer for the district, the county treasurer manages hospital district funds pursuant to the general grant of power extended by the Legislature to hospital districts:

A hospital district shall have all powers necessary and convenient to the acquisition, betterment, operation, maintenance, and administration of such hospital facilities as its board of trustees shall deem necessary and expedient.

§ 7-34-2122, MCA. The Legislature has committed the exercise of this broad grant of power to the board of trustees, which is charged with governing and managing the hospital district. § 7-34-2115, MCA. I conclude that it is consistent with the exercise of power necessary and convenient to the "betterment, operation, maintenance, and administration of ... hospital facilities" for the board of trustees to direct the ex officio treasurer of the district to register unpaid hospital district warrants, to redeem them in the order of their registration, and to pay a particular rate of interest (§§ 17-5-101(1), (2), 17-5-102, MCA) on unpaid warrants between the time they are registered and redeemed. See, for example, §§ 7-6-2603(1), 7-6-2604(3), 7-6-4501, 7-6-4503, 7-6-4504, MCA. The trustees could formalize such a directive to the treasurer by passage of an appropriate resolution in accordance with the bylaws of the district. See § 7-34-2119, MCA. My conclusion is consistent with that of a leading commentator:

If there is no regulation as to the order in which municipal warrants shall be paid, the courts will direct such application as will be fair to the warrant holders and yet subserve the best interests of the municipality. Although it is sometimes held that warrants should be paid pro rata, other authority is to the effect that, in the absence of provision to the contrary, warrants are payable in the order either of their issuance or of their presentation, and generally should be paid in the order of their registration where they draw interest only after such time. [Footnotes omitted.]

15 McQuillin, Municipal Corporations § 42.18 (3d ed. 1985). The least problematic course would appear to be to provide for the redemption of unpaid, registered hospital district warrants in the order of their registration, rather than by a pro rata payment to all holders, as monies collected under the tax levy are paid into the hospital district fund. That result was endorsed in an Illinois case which arose because the legislature did not provide a method for redemption of unpaid school district warrants. Lubezny v. Ball, 59 N.E.2d 645, 647 (Ill. 1945); see also Berwind v. Chicago Park District, 65

N.E.2d 785, 791 (Ill. 1946). In Lubezny, the court opted for redemption of unpaid warrants "in their numerical order" because it was already a "long-continued practice" and because pro rata payments would lead to "endless confusion in the office of the treasurer," and "the nonsalability of warrants." Lubezny, 59 N.E.2d at 647. The rationale for the holding in Lubezny is fully applicable here, since the Chouteau County treasurer has informally adopted the practice of registering unpaid hospital district warrants and paying them out in the order of their registration.

With reference to your fourth question, it is clear that the hospital district possesses the power to lease a hospital facility to a nonprofit corporation. § 7-34-2122(10), MCA. Such an arrangement would create a valid lessor-lessee relationship between the district and the nonprofit corporation. Absent a controlling provision to the contrary in the lease, the nonprofit corporation would have a right as an entity independent from the district to incur indebtedness by borrowing from a commercial lending institution. See § 35-2-107(9), MCA. You suggest in your letter that "[a]t most, the private nonprofit corporation may pledge anticipated revenues from the hospital district as collateral for a loan." While a hospital district may provide funds to a nonprofit corporation operating a hospital district facility for the benefit of the community (see 43 Op. Att'y Gen. No. 70 (1990)), tax revenues may be committed for that purpose only by the district's trustees. §§ 7-34-2115(1), 7-34-2122, MCA. Thus, the nonprofit corporation may pledge only those revenues the district has obligated itself to pay over to the corporation pursuant to the terms of a lease, contract, or other formal agreement.

THEREFORE, IT IS MY OPINION:

1. The unpaid warrants of a hospital district may not be registered as county warrants and purchased by the county in which the hospital district is located.
2. A hospital district does not have authority to borrow money from a commercial lending institution by use of a promissory note.
3. A hospital district's board of trustees may enact an appropriate resolution directing the county treasurer, as ex officio treasurer of the district, to register unpaid hospital district warrants, to redeem them in the order of their registration, and to pay a particular rate of interest on unpaid warrants.
4. A hospital district may lease a district-owned hospital facility to a nonprofit corporation without restricting the right of the corporation, as an entity independent from the hospital district,

to borrow money from a commercial lending institution for the purpose of running the hospital.

Sincerely,

MARC RACICOT
Attorney General