

Municipalities: Cities of the fourth class are prohibited from issuing warrants in excess of the amount on hand in the treasury, by Section 7015, R. S. 1929. A warrant so issued is void.

May 8, 1937.

5-13



Honorable B. W. Harwood, Jr.,  
Mayor  
Camdenton, Missouri

Dear Sir:

This Department is in receipt of your letter of April 28, 1937, requesting an opinion, as follows:

"The City of Camdenton is a city of the fourth class and has issued warrants amounting to about \$2,000.00 under the provisions of sections 7192, 7193, and 7195, R. S. Mo. 1929. All of these warrants were issued without money in the treasury to pay same. All of them have been presented for payment and on all the treasurer has certified 'no funds' on the back thereof and signed his name.

"Section 7015, R. S. Mo. 1929, Chapter 38, Article 8, relating to 'Cities of the Fourth Class' forbids the drawing of any warrant, unless money is in the treasury to pay same.

"The city of Camdenton will hold their next regular meeting of the board of aldermen next Monday night at which I will be pressed to sign my name to warrants in payment of the salary of the city marshal and in payment of the claims of other creditors. No money is in the treasury to pay same, unless the previously issued warrants are void.

"As mayor, elected to my first term this April, I respectfully request your opinion by return mail or as soon as possible, whether or not, under the circumstances indicated, this city can legally issue warrants."

Section 7015, R. S. Mo. 1929, is in part as follows:

"No money shall be paid out of the treasury except on a warrant signed by the mayor and attested by the city clerk. No warrant shall be drawn upon the treasurer, nor shall any ordinance appropriating money be passed, unless there is an unexpended balance to the credit of the city in the fund in the treasury upon which such warrant is drawn, to meet such warrant, or a sufficient sum of unappropriated money in the fund in the treasury upon which such ordinance is drawn, to meet such ordinance. \* \* \* \* \*"

In the case of O'Dell v. Scranton, 103 S. W. 570, the Court had before it a question of the legality of a warrant issued by a city of the fourth class in excess of the funds in the city treasury. In passing upon this question the Court said at l. c. 575:

"In the exercise of the power in question, the city was restricted by the following provision in its charter (section 5954, Rev. St. 1899 (Ann. St. 1906, p. 3008)):  
'No money shall be paid out of the treasury except on a warrant signed by the mayor and attested by the city clerk. No warrant shall be drawn upon the treasurer, nor shall any ordinance appropriating money be passed unless there is an unexpended balance to the credit of the city in the fund in the treasury upon which such warrant is drawn, to meet such ordinance.' The

"fact is conceded that, when the act of the mayor was ratified by the board and the warrant was drawn, the funds in the treasury that could be used for its payment were insufficient for that purpose. The warrant was for the sum of \$219, and the money in the treasury amounted to but \$185.50. The board, therefore, had no power to issue the warrant, and its act, in so doing, must be held void. The purpose of the statute under consideration is in the highest degree salutary. It is to prevent cities of this class from going into debt."

In *General Mfg. Co. v. City of Portageville*, 28 S. W. (2d) 119, a case in which the same question was before the Court as in the *O'Dell* case, *supra*, it is said at l. c. 120:

"The warrant was issued and presented April 1, 1928, but not paid for want of funds. This warrant was void because there were no funds in the treasury with which to pay it when it was payable."

In *Cheaney v. The Town of Brookfield*, 60 Mo. 53, the Court at l. c. 54, in deciding a case similar to this question said:

"And although a warrant signed by the proper officer, prima facie imports validity, and a subsisting cause of action, (Dill. Mun. Corp., Sec. 411) yet it is always competent for a municipal corporation, as was done in the court below, even after the issuance of a warrant upon its treasury, to set up the defense of ultra vires. \* \* \* \* \*

"Those who deal with the officers of a corporation must ascertain, at their peril, what they will indeed be conclusively presumed to know, that these public agents are acting strictly within the sphere limited and prescribed by law, and outside of which they are utterly powerless to act."

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Therefore, it is our opinion, in view of the above cases, that Section 7015, R. S. Mo. 1929, does not authorize the officers of cities of the fourth class to issue any warrant which is drawn for an amount in excess of the amount that is on hand in the city treasury, but specifically prohibits such action by said city officials. Any such warrant so issued is void, illegal and ultra vires, and in a suit to enforce the collection of a warrant so issued, said city has a valid defense which may be set up and will defeat the collection of said warrant or warrants.

Respectfully submitted,

OLLIVER W. NOLEN  
Assistant Attorney-General

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney-General

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