House Bill 219—Constitutional Law—Title—State Debt.

House bill 219 of the twenty-first legislative assembly entitled: "An Act to Permit the Erection and Operation of Residence Halls at State Educational Institutions," and providing for borrowing money by the local executive board of the state university at Missoula and for the pledging of the rents and income derived from residence halls for the purpose of erecting new residence halls, held to be unconstitutional for the reason that the title to the same did not clearly express the subject of the legislation as required by section 23 of article V of the constitution; and for the further reason that

said bill authorizes the creation of a debt against the state without submitting the question to the people at a general election as required by section 2 of article XIII of the constitution.

Chancellor M. A. Brannon, April 4, 1929.
State Capitol Building,
Helena, Montana.

My dear Chancellor Brannon:

You have handed me a copy of a resolution that has been adopted by the board of education wherein the board proposes to authorize the local executive board of the State University at Missoula to borrow $140,000 at a rate of interest not to exceed 6% per annum, for the purpose of erecting and equipping an additional residence hall at the State University at Missoula, and to sell notes, certificates of indebtedness or other interest-bearing obligations in that amount, for the payment of which the board of education attempts to pledge the net surplus revenue to be derived from the operation of the residence halls now established at said university, and of the additional hall proposed to be built by the funds arising from the above-mentioned transaction; said resolution further providing that:

> "Such evidences of indebtedness shall specifically and expressly provide that the net surplus revenue from the operation of the residence halls at the State University at Missoula are pledged for the payment of the principal and interest thereof, and that such revenue so pledged shall constitute the only source of funds for the payment thereof, and that such evidences of indebtedness are not obligations of the State of Montana, or of any institution, branch or department of the State of Montana."

In another part of said resolution it is provided that the "certificates of indebtedness or other obligations shall not be or become obligations of the State of Montana or the State Board of Education, or the State Board of Examiners, or of the Local Executive Board of the State University to any different or greater extent than that the revenues of the said residence halls shall be and are hereby pledged to the payment thereof, and such obligations shall not constitute a lien against said residence halls."

You ask my opinion as to the legality of the procedure mentioned in said resolution. Authority therefor is claimed under house bill No. 219 of the Twenty-first Legislative Assembly of the State of Montana, which was approved by the governor March 11, 1929. The full title to said bill is as follows: "An Act to Permit the Erection and Operation of Residence Halls at State Educational Institutions."

Section 1 of said bill purports to grant to the state board of education the authority to erect from time to time at any of the institutions under its control such residence halls as may be required for the good of the institutions; to rent the rooms in said residence halls and provide

board to the students, officers, guests, and employees of said institutions at such rates as will insure a reasonable excess of income over operating expenses; to hold the funds derived from the operation of said residence halls and spend the same for repairs, replacements, and betterments, including the erection of additional residence halls and to exercise full control and complete management of such residence halls.

Section 2 provides that the title to all real estate and improvements acquired and erected under the provisions of this act shall be taken and held in the name of the State of Montana. Section 3 reads as follows:

> "In carrying out the above powers, said board may:
>
> (a) Borrow money.
>
> (b) Pledge the rents and income received from the residence halls for the discharge of loans so executed."

Section 4 reads as follows:

> "No obligation created hereunder shall ever be or become a charge against the State of Montana, but all such obligations, including principal and interest, shall be payable solely:
>
> (a) From the net rents and income pledged.
>
> (b) From the net rents and income which has been pledged for other purposes arising from any other residence halls or like improvement under the control and management of said board; or,
>
> (c) From the income derived from gifts and bequests made to the institutions under the control of said board for residence hall purposes."

Section 5 provides that in discharging obligations under Section 4, the residence halls at each of said institutions shall be considered as a unit and the rents and income available for residence hall purposes at one institution shall not be used to discharge obligations created for residence halls at another institution.

Section 6 reads:

> "No state funds shall be loaned or used for this purpose. This shall not apply to funds derived from the net rents and income of residence halls now or hereafter owned by the State of Montana."

The foregoing is the entire substance of the bill set forth almost verbatim. It is to be observed that no date is fixed in the bill as the time when it shall take effect. The time is therefore fixed by Section 90, R.C.M. 1921, which reads as follows:

> "Every statute, unless a different time is prescribed therein, takes effect on the first day of July of the year of its passage and approval."

House Bill No. 219, therefore, does not become effective until July 1st, 1929. Until the time arrives when it is to take effect and be in force, a statute which has been passed by both houses of the legislature and

approved by the governor, has no force whatever for any purpose, and all acts purporting to have been done under it prior to that time are void.

Statutes, 36 Cyc. 1192, and cases cited;

Harrison vs. Colgan, 82 Pac. 674, (Cal.).

The resolution passed at this time, and all other acts which might be done under the supposed authority of said house bill prior to the first day of July, 1929, are, in my opinion, null and void.

Passing now to the validity of the bill itself, it will be observed that its title—"An Act to Permit the Erection and Operation of Residence Halls at State Educational Institutions"—utterly fails to clearly express the subject dealt with in the body of the bill, as is required by the Constitution of Montana. Article V, Section 23, is as follows:

> "No bill, except general appropriation bills, and bills for the codification and general revision of the laws, shall be passed containing more than one subject, **which shall be clearly expressed in its title**; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed."

As to the purpose of this provision our Supreme Court has said:

> "The purposes of the clause of the constitutional mandate that the subject of a bill shall be clearly expressed in its title, have been considered and defined by this court in State vs. Mitchell, 17 Mont. 67, 42 Pac. 100; Jobb vs. County of Meagher, 20 Mont. 424, 51 Pac. 1034, and the authorities cited in these cases. Briefly summarized they are: To restrict the legislature to the enactment of laws the objects of which legislators and the public as well may be advised of, to the end that any who are interested, whether as representatives or those represented, may be intelligently watchful of the course of the pending bill. The limitation is likewise designed to prevent legislators and the people from being misled by false or deceptive titles, and to guard against fraud in legislation **by way of incorporating into a law provisions concerning which neither legislators nor the public have had any intimation through the title read or published.**"

State vs. Anaconda Copper Mining Co., 23 Mont. 498, 59 Pac. 584;

State ex rel. Holliday vs. O'Leary, 43 Mont. 157, 115 Pac. 204.

The sufficiency of the title should be tested by the following rule:

> "If a title **fairly indicates the general subject** of the act, **is comprehensive enough in its scope reasonably to cover all the provisions thereof,** and **is not calculated to mislead either the legislature or the public,** this is a sufficient compliance with the constitutional requirement. Generality or comprehensiveness in the title is no objection, **provided, the title is not misleading or deceptive** and **fairly directs the minds to the subject of the law**

in a way calculated to attract the attention truly to the matter which is proposed to be legislated upon." (Evers vs. Hudson, 36 Mont. 135, 92 Pac. 462).

The "matter legislated upon" by house bill No. 219 was not only the erection and operation of residence halls but it also included borrowing of money and pledging the rents and income from the halls for the discharge of the loans made. Together, these constituted a single subject which might be included in one bill, provided the title was comprehensive enough in its scope to cover the entire subject. The financing scheme is as important a part of that subject as is the authority to erect the halls; and in view of our constitutional restrictions relating to the incurring of indebtedness it might be said that the authority to create the indebtedness is the more important part.

In Montana a power granted by the legislature to erect state buildings does not imply a grant of authority to incur indebtedness to carry out the power granted. Owing to the fact that the state is already indebted far in excess of $100,000 (the limit of indebtedness which may be created without authorization by the people through an election) the matter of creating an indebtedness is of such paramount importance that the people have by their constitution reserved to themselves the right to say whether an indebtedness shall be incurred and they are entitled to be fully and directly advised of the proposal to create it.

It will be difficult to say with reason that if House bill No. 219 were to be submitted to the people as an initiative or referendum measure, with only the title it now bears, the electors would be advised thereby that the body of the bill contains authority to incur indebtedness and to hypothecate the income of its institutions. To "permit" the erection of residence halls does not in any manner impart a provision to provide funds by borrowing money and pledging property as security for its payment. Bare permission to do a thing does not imply an obligation on the part of the person granting it, to provide the means of doing it. Through such a title the electors would be deceived and many persons would no doubt vote for permission to build who would not have done so had they known that at the same time they were voting to incur indebtedness and pledge the income of the state institutions for its payment.

The people, as well as the members of the legislative assembly, have the same right to be fairly advised of the contents of a bill through its title when it is in process of enactment by the legislature. The title of House bill No. 219 failed to do this. It gave notice of a thing innocent enough—"permission" to build and operate residence halls—but was silent as to the creation of indebtedness and the burden of discharging it, together with interest, from the revenues of the halls.

It is therefore my opinion that the house bill falls under the condemnation of Section 23 of Article V of the Constitution, insofar as the scheme of financing set out in the resolution is concerned.

Proceeding further with the examination into validity of the act, it will be observed that it provides that no obligation created under it shall become a charge against the State of Montana, but the obligation shall

be payable solely from net rents and income pledged and from gifts and donations. (Section 5). Section 6 provides that "no state fund shall be loaned or used for this purpose but this shall not apply to funds derived from the net rents and income of residence halls now or hereafter owned by the State of Montana."

The bill evidently attempts to relieve the state from being generally liable for the indebtedness incurred, leaving only the specific fund mentioned in the bill as the sole source of payment. This fund includes net rents and incomes from the residence halls.

These halls are owned by the State of Montana. Section 194 R.C.M. 1921 provides that all income from fees and earnings of each state institution, from whatever source they may be derived, other than the income from permanent funds and endowments, land grants and contributions from public and private bounty, shall be deposited by the state treasurer to the credit of the general fund. This includes income from dormitories which are a part of the University of Montana.

Section 196 R.C.M. 1921 provides that the state board of examiners may, in its discretion, permit a state institution to retain in its possession income from dormitories conducted by said institution but that this privilege may be cancelled at any time, and, if so, said moneys must be deposited with the state treasurer.

House bill No. 219, under consideration, permits the state board of education to hold said funds, and spend the same for repairs, construction, etc.

It is apparent that the income derived from these residence halls is state money and property, and Section 6 of said house bill so implies when it segregates these funds from other state funds. This income and the right to receive it is property of the state, and it is the state's property that is pledged to discharge the indebtedness incurred. Otherwise stated, the state is obligated by the pledge of its property to pay the debt. If the state must pay, the debt to be paid must be its debt in contemplation of law. The Constitution forbids the state paying the obligations of others. (Article XIII, Section 1).

The indebtedness to be created, being a state debt, may not be incurred without submitting the question to the electors of the state.

> "The Legislative Assembly shall not in any manner create any debt except by law which shall be irrepealable until the indebtedness therein provided for shall have been fully paid or discharged; such law shall specify the purpose to which the funds so raised shall be applied and provide for the levy of a tax sufficient to pay the interest on, and extinguish the principal of such debt within the time limited by such law for the payment thereof; but no debt or liability shall be created which shall singly, or in the aggregate with any existing debt or liability, exceed the sum of one hundred thousand dollars ($100,000) except in case of war, to repel invasion or suppress insurrection, unless the law authorizing the same shall have been submitted to the people at a general election and shall have received a ma-

jority of the votes cast for and against it at such election." (Constitution, Article XIII, Section 2).

Every indebtedness is payable out of some fund and it is immaterial on the question of whether an indebtedness is created, that the obligation is payable out of a particular fund. Taxpayers are interested in all of the funds of the state, and they may not be deprived of their constitutional right to determine whether a debt shall be created by alleged exhonoration of liability in words, when the fact remains that their funds and property must bear the burden of discharging the debt created.

It is therefore my opinion that for this reason also the said House bill No. 219 is unconstitutional, and that it affords no authority for the action of the board as contained in the resolution.

Very truly yours,
L. A. FOOT,
Attorney General.
By L. V. Ketter, First Assistant.