

No appropriation is contained therein unless same is authorized by Section 8 thereof which reads as follows: "Each delegate shall receive mileage and per diem as provided by law for members of the Legislative Assembly. The Secretary and other officers shall receive such compensation as may be fixed by the convention." The Constitution of Montana provides: "No money shall be paid out by the treasury except upon appropriations made by law, and on warrant drawn by the proper officer in pursuance thereof, except interest on the public debt." (Sec. 34, Article V.) "All taxes levied for state purposes shall be paid into the state treasury and no money shall be drawn from the treasury but in pursuance of specific appropriations made by law." (Sec. 10, Art. XII.) The decision of the question submitted is therefore dependent upon the question of whether or not an appropriation to meet the expenses has in fact been made.

Opinion No. 580

Constitutional Conventions—Appropriations—Legislative Assembly—Delegates, Salaries and Expenses.

HELD: A general law authorizing the holding of conventions to ratify constitutional amendments and fixing the compensation of delegates does not constitute an appropriation, as required by the Constitution, for the expenses of such convention, its employees or delegates.

July 27, 1934.

You inquire as to the right of the Board of Examiners to approve claims for mileage and per diem of delegates, and other expenses of a convention to ratify the Eighteenth Amendment to the Constitution of the United States. Chapter 188, Laws of 1933, is a general statute whose purpose is stated in its title as follows: "An Act to Provide for Conventions to Ratify Proposed Amendments to the Constitution of the United States." Its terms do not limit it to a convention to ratify the Eighteenth Amendment, but to ratify any amendment which may be submitted to the several states and require ratification by conventions.

The Supreme Court of Montana has passed upon a number of questions involving appropriations, among which the following may be cited. It has been held in the case of the salary of the Secretary of State where same is fixed by the Constitution of the state, that the determination of same in the constitution constituted an appropriation and no further appropriation was necessary. (*State ex rel Rotwitt v. Hickman*, 9 Mont. 370.) Where the act creating a Code Commission fixed the total compensation of each commissioner at \$4000.00 and authorized the auditor to draw his warrant for such salaries of the commission to be paid by him out of any funds not otherwise appropriated, such statute was held to constitute a valid appropriation for the compensation of a commissioner. (*State ex rel Wade v. Kenney*, 10 Mont. 485; followed in *State ex rel Maddox v. Kenney*, 10 Mont. 533.) The same act which created the Code Commission authorized the employment of a clerk, who shall receive for his services \$150.00 per month. "The salary of the clerk of such commission shall be paid monthly by the auditor upon vouchers to be approved by the chairman of the commission." It was held that no appropriation had been made for the payment of the salary of the clerk. (*State ex rel Blackford v. Kenney*, 10 Mont. 496.) This decision was based upon the

case of *State ex rel Journal Publishing Co. v. Kenney*, 9 Mont. 389.

Where a statute provided that, as to money which had been deposited with the state treasurer by virtue of an escheat, an action might be brought by a party claiming to be entitled to same and upon proof the court might render a judgment against the State of Montana for the amount found to be due and that the auditor should draw his warrant on the treasury for the payment of the same, the act contained no specific appropriation and it was held that no appropriation was made and that the claim could not be paid. This was held although the validity of the claim had been approved and its payment authorized by statute. The following statement is found in the opinion: "There appears to be no objection to the statute insofar as it authorizes the petitioner to establish his right to the property as a claim against the state, which in equity and good conscience it ought to discharge, leaving to subsequent legislative assemblies to provide by adequate appropriation for such claims as they arise and are adjudicated." (In re *Pomeroy*, 51 Mont. 119, 126.)

The rule is recognized that appropriations upon the general fund must be definite and certain although the law which contains the appropriation may be so worded that a subsequent mathematical calculation is required to determine the amount of the appropriation. (*State ex rel Toomey vs. State Board of Examiners*, 74 Mont. 1, 9.)

It is to be noted that the number of days for which the delegates to and employees of these conventions are to receive compensation is indefinite, the statute stating that "Each delegate shall receive mileage and per diem as provided by law for members of the legislative assembly." It is further to be noted that the legislative assembly not only fixes its compensation per diem and mileage by statute, but that it also makes specific appropriations at each session to cover these expenditures.

From the cases cited we must conclude that a general law authorizing the holding of conventions to ratify constitutional amendments and fixing the compensation of delegates does not constitute an appropriation as required by the constitutional provisions quoted

herein. Therefore, the Board of Examiners would not be authorized to approve and order paid the expenses of such convention, its employees or delegates.

Attention is directed to Section 241, R. C. M., 1921, which provides that the Board of Examiners may audit claims where no appropriations for same have been made and on such approval shall transmit the claim to the legislative assembly with a statement of their approval.