Opinion No. 296.

Governor — State Examiner — State Highway Commission—Examinations of State Boards and Commissions.

HELD: 1. The Governor has authority to direct the State Examiner to make an examination of the Montana State Highway Commission.

2. In the event of such examination the Commission is required to reimburse the State Examiner's Permanent Revolving Fund for the salaries and expenses of such examination.

June 3, 1936.

Hon. Elmer Holt
Governor of Montana
The Capitol

You have inquired (1) whether you are authorized to direct the State Examiner to make an examination of the Montana Highway Commission; and (2) whether in the event of such examination the Montana Highway Commission is required to reimburse the State Examiner's Permanent Revolving Fund for the salaries and expense of such examination.

Section 124, R. C. M. 1921, provides:

"In addition to those prescribed by the Constitution, the Governor has the power and must perform the duties prescribed in this and the following sections:

"1. He is to supervise the official conduct of all executive and ministerial officers. * * *

"13. He may require any officer or board to make special reports to him, upon demand, in writing."

This section is also consistent with

Section 5, Article VII of the Constitution of the State of Montana, which provides that the supreme executive power of the state shall be vested in the Governor, and with Section 10 of said Article VII, which provides that the Governor may require information in writing from the officers of the executive department upon any subject relating to the duties of their respective offices.

It is clear from the foregoing constitutional and statutory provisions that the Governor, in whom is vested the supreme executive power of the state, has the authority to direct the State Examiner to make an examination of the Montana Highway Commission. Not only has the Governor such authority to direct the State Examiner but the State Examiner himself has been vested with authority to make special examinations when in his judgment it shall be deemed necessary. Chapter 93, Laws of 1923, as amended by Section 2, Chapter 167, Laws of 1929, reads as follows:

"Special examinations may be made of any county, city, town, school district, irrigation district, high school, bank, building and loan association **or any other office, board or commission, whether temporary or permanent, however created, and for whatever purpose, having the control, management, collection, or disbursement of any public money of any character or description,** when in the judgment of the State Examiner it shall be deemed necessary, and such special examinations shall be charged for at the rate of Fifteen Dollars ($15.00) per day for each examiner employed for the time actually consumed, together with the necessary transportation * * * ." (Emphasis ours.)

See also my opinion in Volume 15, Opinions of Attorney General, page 207.

As to the second question, House Bill 532, Laws of 1935, page 488, provides: "There is further appropriated from the general fund, the sum of Five Thousand Dollars.....$5,000.00 for the purpose of creating a permanent revolving fund to be known as the State Examiner's permanent revolving fund. The salaries and expense of all examinations of the State Liquor Control Board, the Montana Relief Commission, the Montana Fish and Game Department **and of all special examinations of any state office, department or agency, shall be paid from this revolving fund, and such board, commission, department or agency, shall reimburse said fund in an amount equal to the entire expense incurred in making such examination or examinations,** so that this fund may become a permanent revolving fund for the purpose of meeting the expense incurred in making special or unusual examinations as above set forth." (Emphasis ours.)

The Montana Highway Commission comes within the meaning of "any state office, department or agency" as well as "such board, commission, department or agency."

It is therefore my opinion that both questions should be answered in the affirmative.