Opinion No. 87.

Montana Relief Commission—Federal Relief Funds—Appropriations.

HELD: 1. Funds received from the Federal Government under the Federal Emergency Relief Act of 1933, for relief purposes, are trust funds to be disbursed by the proper officials, and no appropriation by the State Legislature is necessary in order to authorize such disbursement.

2. The $3,000,000 appropriation made by Section 20, Chapter 109, Laws of 1935, does not apply to moneys received from the Federal Government for relief purposes.

April 24, 1935.

Hon. John J. Holmes
State Auditor
The Capitol

At informal conferences it has been questioned whether the $3,000,000 appropriation specifically mentioned in Section 20, Chapter 109, Laws of 1935, is intended as an appropriation only of profits from state liquor stores and of revenues from taxation by the State of Montana, or whether said appropriation is intended to cover also moneys received from the United States government for the purposes of relief within the State of Montana.

This raises also the incidental questions whether or not there is any necessity for the appropriation of moneys received from the United States government for relief purposes and whether or not the action of the legislature in attempting to appropriate or its inaction in failing to appropriate, as the case may be, moneys received from the United States for such purposes has any effect whatever upon the distribution of the funds.

By virtue of the Federal Emergency Relief Act of 1933, the United States government from time to time grants to the governors of the several states large amounts of money to be used solely and exclusively "to aid in meeting the costs of furnishing relief and work relief and in relieving the hardship and suffering caused by unemployment in the form of money, service, materials, and/or commodi-

ties to provide the necessities of life to persons in need as a result of the present emergency, and/or to their dependents, whether resident, transient, or homeless." The entire context of that act leads to the inevitable conclusion that such moneys are furnished to the Governor, not for the use of the state in any of its ordinary functions, nor as a donation to the state for any of its functions as a sovereign, but to be used by him and by the state, in a representative capacity, to relieve the suffering of people of the United States within the State of Montana.

Under the authority of this act, the government of the United States has spent in the State of Montana, through the agency of the governor and of the Montana Relief Commission, approximately fifteen millions of dollars in the two years ending December 31, 1934. During that period the state out of its own revenues has raised and spent comparatively little.

In order to cooperate more fully with the Federal government and to assume, even in a small measure, some share of the relief burden, there was passed by the Twenty-fourth Legislative Assembly Chapter 109 which, according to the title, is "An Act Harmonizing, Revising, and Codifying the Sections of the Laws Heretofore Passed Relating to the Montana Relief Commission, and the Emergency Relief Fund," etc.

This act creates a state institution known as the Montana Relief Commission and prescribes in detail many of its duties and methods of operation.

It creates a fund known as the "Relief Fund" into which are to be paid all moneys provided therefor by the legislative assembly, as well as such funds as are made available for relief purposes to the state or to the governor by the Federal government. It appropriates the sum of $3,000,000 and for the purpose of effectuating such appropriation amends various revenue producing laws by making a redistribution of the moneys received under them. The law makes the state treasurer the depositary of all such funds.

It is generally conceded that the revenues for relief purposes to be produced by state taxation cannot and will not exceed the sum of $3,000,000 for the next two years, but that the moneys to be received from the United States government for relief purposes within this state will aggregate approximately twelve millions of dollars during the year 1935 and almost as much during the year 1936. It is further conceded that without the receipt of such Federal money it will be impossible for the Montana Relief Commission to carry on the necessary relief work during the next two years.

It has been suggested that since the Federal money is deposited with the state treasurer it becomes a portion of the state funds and cannot be withdrawn from the treasury except upon appropriation by the state legislature. It has been suggested further that when any Federal moneys are withdrawn they must be charged against the $3,000,000 appropriation and that as soon as the $3,000,000 limit has been reached all further withdrawals and expenditures must cease. Under such construction the $3,000,000 appropriation would be exhausted within two or three months.

With these contentions we cannot agree.

At the very outset we call attention to Section 18 of Chapter 109 (Montana Relief Commission Act.) which states: "This act being necessary for the welfare of the state shall be liberally construed to effect the purposes thereof."

It can well be argued that the establishment of the "Relief Fund" and the powers given to the Relief Commission to disburse and distribute Federal funds, in itself constitutes an appropriation of such Federal funds, effective at least for two years.

In our opinion, however, it is not necessary so to construe the act, because it is not necessary that there be any specific appropriation of such Federal funds by the state legislature.

These funds are granted by the United States for a specific purpose. They cannot be used for any other purpose. They cannot be placed in the General Fund of the state and used for the general support of state functions. They are trust funds in every sense of the word. If the state officers charged with their custody

and disbursement should attempt to use them for any purpose other than the purpose mentioned in the Federal Emergency Relief Act of 1933, undoubtedly an action would lie to enjoin such unauthorized use.

It is, without doubt, the correct and logical view that trust funds, even though placed in the custody of the state treasurer, are not state funds requiring appropriation under the terms of the constitution. A case very nearly in point is that of State v. Searle (Neb.), 109 N. W. 770.

In that case it appears that by act of Congress, the United States appropriated $15,000 from year to year to be paid to the proper officer for use in the endowment and support of agricultural experiment stations. At first the money was paid directly to the Board of Regents of the University of Nebraska, which proceeded to spend it without any deposit whatever in the state treasury. In 1899, however, the state treasurer was made custodian of the University funds and since that time the money in question was paid by the United States to the state treasurer. It was contended that the fund having been paid to the state treasurer could not be expended by the board without a specific appropriation thereof by the legislature. The Supreme Court of the State of Nebraska in an unanimous decision held this argument to be without merit, saying:

"From an examination of those cases we find that in each of them the fund in question was money paid into the state treasury as taxes, and therefore it belonged to the state until specifically appropriated by the Legislature to the use of the University; while in the case at bar the fund never belonged to the state. It was donated by the United States to the experimental station of the University for a specific purpose, and was paid to the State Treasurer as the agent of the Board of Regents and custodian of the funds of the University. It never was and is not now any part of the funds of the state. The Legislature of 1899, recognizing this fact, and presumably intending to put the whole matter at rest, passed a general law in which, after classifying the other funds of the University, it was provided as follows: 'The agricultural experiment station fund shall contain all the money which may come into the possession of the State Treasurer, on and after July 1st, 1899, accruing under an act of Congress approved March 2nd, 1887, entitled, "An act to establish agricultural experiment stations in connection with the colleges established in the several states under the provisions of an act approved July 2d, 1862, and the acts supplemental thereto"; also all moneys which may hereafter be received by virtue of any act of Congress supplemental to said agricultural experiment station act, and for the same purposes. The said experiment station fund is hereby appropriated to be applied exclusively to the uses and objects designated by the said act or acts of Congress relating thereto, and the same shall at all times be subject to the orders of the Board of Regents for expenditure for said purposes only * * *.' Section 19 of chapter 87 of the Compiled Statutes, 1905 (Cobbey's Ann. St. 1903, §11,215). In view of the nature of the fund in question, of section 2 of article 8 of the Constitution, and the acts of the Legislature above quoted, it seems clear that in general terms the expenditure of said fund by the Board of Regents is clearly authorized, and no other or more specific appropriation is necessary."

There are, it is true, some decisions which take the opposite view, but in our opinion they are supported by neither logic nor the weight of authority. The question is settled in the State of Montana by decisions of our own supreme court upon analogous cases. The first case is that of State ex rel. Bickford v. Cook, 17 Mont. 529.

When Montana was admitted to the Union the United States government granted to it certain lands, the proceeds from the sale and rental of which were to be devoted to the purpose of erecting a State Capitol building. It was contended that these funds were state funds and as such were subject to various restrictive clauses in the State Constitution relating to the expenditure of state funds and to the incurring of indebt-

edness. In disposing of this contention, however, the court said:

"When congress made a grant of land to the state for public buildings at the capital of the state, by act of congress approved February 22, 1889, providing for the admission of the state into the Union, it was enacted that the lands so granted should be held, appropriated, and disposed of exclusively for the purpose mentioned in the act, in such manner as the legislature of the state might provide. The state, by Ordinance No. 1, §7, has accepted these lands for the purposes specified, and by legislation has provided for the erection of a capitol, exclusively out of moneys from a fund to be created from the disposition of the lands so granted by congress. **The state is an agent to carry out the objects of the donation. The fund created by the statute is a trust fund established by law in pursuance of the act of congress. It is not a state fund** in the sense that moneys realized from taxes, for instance, and in the public treasury, are state funds. Nor is the disbursement of this capitol fund an expenditure of the state, within the meaning of expenditures generally referred to in the constitution.

"The restrictions of section 12, art. XII, of the constitution, forbidding appropriations or expenditures by the legislature whereby the expenditures of the state during any fiscal year shall exceed the total tax then provided by law, unless provision is made for levying a special tax, not exceeding the rate allowed by the constitution, are therefore not applicable to this trust fund. The state cannot use the fund created by this act for any purpose except as provided for by the act of congress. The state officers have no control over it, except to carry out the trust relation; and **the treasurer** is merely an agent for receiving and disbursing the fund under the act of congress, and in manner provided by the law of the state. So, too, **the auditor** is but one of the agents or subagents designated by the law of the state in the execution of the trust. All this seems very clear to us from the law. It is also in full accord with the decision of the supreme court of Washington, where, under the same act of congress above referred to, a similar grant of lands was made by the United States to that state for state buildings at the state capital, and a like question to this at bar was before the court."

By act of Congress certain lands also were granted to the state for university purposes.

Again in the case of State ex rel. Dildine v. Collins, 21 Mont. 448 it was contended that the University Bond Fund, secured by revenues from such lands, was a state fund and was subject to constitutional inhibitions applying to state funds.

The Supreme Court reaffirmed the principles stated in the case of State v. Cook, supra, and held that the University Bond Fund was a trust fund and that a claim for compensation out of such fund was not a claim against the state, but rather a claim against the fund. We quote from this decision to illustrate the reasoning of the court:

"The statute cited, providing for the erection, completion and equipment of buildings for the university of the state, was passed and approved after the decision of this court in State v. Cook, 17 Mont. 529, 43 Pac. 928. The legislature are therefore presumed to have acted with full knowledge of the interpretation placed upon a statute of similar import, and whereby the fund created by the sale of bonds secured by pledge of the lands donated to the state by act of congress approved February 22, 1889, entitled 'An act to provide for the division of Dakota into two states, and to enable the people of North Dakota, South Dakota, Montana and Washington to form constitutions and state governments, and to be admitted into the Union on an equal footing with the original states and to make donations of public lands to such states,' was held to be a trust fund established by law in pursuance of the act of congress, yet not to be a state fund, in the sense that moneys realized from taxes and in the public treasury are state funds. It was held that the state was to be regarded in the light of an agent for the execution of a trust. No state debt is cre-

ated, or can be created, under the law, and the people of the state contribute no money to the fund. It is really a donation by the federal government, **and is upon a different footing, entirely, from funds arising by taxation, and out of which are built, for instance, reform schools, soldiers' homes, arsenals, penitentiaries and asylums, not included in the enabling act, all of which are state funds, to be disbursed as expenditures of the state, and which are brought fairly within the meaning of the constitutional limitations and restrictions.** So that, upon reconsideration of the views expressed in the Cook case, we feel that they must stand as correct."

Again, in the case of State ex rel. Koch v. Barret, 26 Mont. 62 a similar question was raised. Congress granted certain lands to the state for the use of agricultural colleges. The state treasurer declined to pay a warrant drawn upon funds realized from the sale and rental of such lands upon the ground that there had been no appropriation made by the legislature. It is interesting to note that in that case as in the case of the Montana Relief Commission the state treasurer was designated by law as the proper depositary for such funds. The court reviewed the previous Montana cases and in requiring the treasurer to pay the warrant, even in the absence of specific appropriation, said:

"We think the principle of these cases applicable to the present case, and that the legislature, in defining the powers and duties of the board of education, with a view of following the spirit and intention of the act of congress creating the trust, intended that this board should be clothed with the special and exclusive power of executing it free from the limitations and restrictions of the constitution as to the expenditure of the ordinary revenues of the state."

A careful reading of Chapter 109, Laws of 1935, clearly discloses that the legislature did not deem an appropriation of Federal relief money necessary, but did intend to confine the appropriation of the $3,000,000 solely to those funds which were to be raised by the state through its taxing and other powers. This is demonstrated by Section 20, which in the first sentence appropriates $3,000,000 for the biennium, and in the same sentence says: "And in order to effectuate such appropriation the following laws be and the same are hereby amended as follows, * * *". Here, as a part of the same section, follow amendments to the Liquor Law, to the Montana Beer Act, to the Income Tax Law, to the Telegraph Business Tax Law, to the Electricity Tax Law, to the Inheritance Tax Law, and to the Natural Gas Tax Law, reallocating the proceeds so that the sum of $3,000,000 so appropriated would be realized from state revenues.

From the decisions above cited and from a careful reading of the Federal Emergency Relief Act of 1933, we have come to the following conclusions:

1. That if any appropriation of such Federal funds be necessary, Chapter 109, Laws of 1935, fully serves to appropriate them, and that such appropriation is effective for at least two years.

2. That funds received from the Federal government, under the Federal Emergency Relief Act of 1933, for relief purposes, are trust funds; that the officers charged with the disbursement thereof, under said Chapter 109, Laws of 1935, are purely agents for the disbursement thereof; and that no appropriation by the state legislature is necessary in order to authorize their disbursement.

3. That the $3,000,000 appropriation made by Section 20, Chapter 109, Laws of 1935, applies only to moneys produced by the State of Montana from the profits of its liquor stores and from the various taxes mentioned in said act, and does not apply to moneys received from the Federal government for relief purposes; that moneys expended by the Montana Relief Commission out of funds received from the Federal government under the Federal Emergency Relief Act of 1933 should not be charged against or deducted from the appropriation of $3,000,000 made by Chapter 109, Laws of 1935.