

**Opinion No. 290.****Teachers' Retirement Board — Liquor  
Control Board—Net Receipts,  
How Determined.**

HELD: 1. The Teachers' Retirement Board is entitled to 5% of net receipts from sales of liquor not exceeding \$75,000.

2. "Net Receipts" include cash reserves and increased stock.

3. Expenses of operating of warehouse, enforcement division, and similar items must not be deducted out of the proceeds of liquor sales before computing "net receipts."

June 20, 1938.

Hon. Ray N. Shannon  
State Treasurer  
The Capitol

Dear Mr. Shannon:

You have submitted to this office the question as to how funds derived from

the sales of liquor should be computed in ascertaining the amounts payable to the teachers' retirement board by the liquor control board. Paragraph (a), Subsection (3), Section 8 of Chapter 87, Laws of 1937, provides:

"Until such time as stated above the State shall pay to the teachers retired under this act the amounts specified therein, provided, however, that for each of the years beginning July 1, 1937, and July 1, 1938, the State's contribution shall not exceed the sum of \$75,000 per annum; provided, further, that the retirement board shall pay to the teachers qualifying under this act their proportionate share of the amounts specified herein."

Section 11 of said chapter provides:

"(1) From and after the first day of July, 1937, there shall be and is hereby appropriated from all moneys derived from the sales of liquor at all of the state liquor stores within the state, five per centum (5%) of all of the net receipts of such sales for the purpose of creating and maintaining the pension accumulation fund created by and in Section 8 of this act. Beginning on the first day of August, 1937, the Montana liquor control board shall on the first day of each month or as soon thereafter as the said Montana liquor control board has determined the net receipts from all sales of liquor at the state liquor stores for the month next preceding, disburse to the state treasurer a sum equal to five per centum (5%) of such net receipts, such sum to be taken from moneys derived from the sale of liquor at the state liquor stores. If at any time when such disbursement is required hereby to be made, there are not sufficient moneys on hand to make the same, the deficit shall be made up from the first receipts from the sales of liquor at the state liquor stores received by the said Montana liquor control board thereafter. The state treasurer shall immediately upon receipt of any and all sums hereby required to be made to him, place them in the pension accumulation fund created by and in Section 8 of this act. Provided that if the receipts shall exceed the amount required under the provisions of subdivision (3) (a). Section 8 of this act,

said surplus shall revert to the general fund of the state."

The law does not give the retirement board a fixed or definite sum of \$75,000, but 5% of all the net receipts from all moneys derived from the sales of liquor out of all of the state liquor stores. Paragraph 3 of Section 1, Chapter 84, Laws of 1937, excludes the liquor control warehouse from being defined as a state liquor store. The total net amount, not exceeding \$75,000, which is payable to the teachers' retirement board by the liquor control board is contingent upon what 5% of the net receipts may be. In determining the net receipts, the expenses of the state liquor stores in the operation of the state warehouse and expenses of its personnel, including that of the board, the enforcement and other similar expenses should not be deducted. In other words, you should distinguish between net receipts of the state liquor stores and net receipts of the liquor control board. Reserves in cash, being derived from the sales of liquor, must be included as a part of the net receipts of the state liquor stores. The increase from July 1, 1937, to July 1, 1938, of all stock in all stores and warehouse, or wherever held, as determined by inventory, or otherwise, must be treated as net profits of the state liquor stores for the reason that the same were acquired through revenue from the net receipts of the state liquor stores. The liquor board is without authority to establish or declare an arbitrary dividend, but must establish and declare its dividend in accordance with the law as herein enunciated.

After an examination of the records of the liquor control board and following these rules, it appears to me that, for this fiscal year, there will be sufficient funds from the sources provided by law for the liquor control board to pay the teachers' retirement board the full sum of \$75,000.