

Opinion No. 80**Appropriations—Legislative Council**

- Held:** 1. The present appropriation for the Legislative Council will revert to the general fund on February 21, 1959.
2. The amount remaining unexpended in that appropriation on that date may be reappropriated by the 1959 Legislature for the period from February 21, 1959 to July 1, 1959.

November 21, 1958

Mr. Eugene C. Tidball
Executive Director
Montana Legislative Council
Capitol Building
Helena, Montana

Dear Mr. Tidball:

You have requested my opinion upon two legal questions arising from the following facts: Chapter 34, Laws of 1957, creating the Montana Legislative Council, was approved by the Governor February 21, 1957, and became effective on that date. The act provided for an appropriation of \$100,000.00 to carry out the provisions of that act.

It now appears that there will be a substantial balance remaining in this appropriation on February 21, 1959. Since the Legislative Council is a continuing body it appears desirable that its future appropriations be made on a fiscal year basis commencing each July 1st. This creates the problem of financing the Council's operations from February 21, 1959, to July 1, 1959. The questions arising from the above facts are these:

1. Does the present Legislative Council appropriation revert to the state general fund on February 21, 1959?

2. If so, may the unexpended balance be reappropriated by the 1959 Legislature for the period from February 21, 1959 to July 1, 1959?

The answer to each of these questions is yes.

Your first inquiry is covered by Article XII, Section 12 of the Montana Constitution which in part provides:

"No appropriation of public moneys shall be made for a longer term than two years."

The language of the provision is so clear that it has never been directly questioned in our Supreme Court. However, the court's pronouncements in those instances where the effect of the section has been raised collaterally leave no doubt that the constitutional provision is an absolute limitation.

In *Hill vs. Rae*, 52 Mont. 378, 158 Pac. 826, the court considered the application of this section to an appropriation which was by its terms unlimited as to time. The court said:

"Conceding that the appropriation is not limited in terms as to time, it is our opinion that the provision in section 12, Article XII, forbidding appropriations for a longer term than two years, operates as an automatic limit, so that the appropriation, if otherwise valid, would expire at the end of that time, . . ."

In seeking an answer to your second question I have been unable to find any constitutional provision, statute or court decision which would cast the slightest doubt upon the power of the Legislature to appropriate available moneys for a period of less than two years.

It has been a standard practice of the Legislature for many years to appropriate funds sufficient to permit operation until the beginning of the following fiscal year where it appears that the regular biennial appropriation of some department would be exhausted before that time. (See, i. e., House Bill 464, 35th Legislative Session, 1957.)

I believe this procedure provides a safe precedent to be followed in this case. It is therefore my opinion that:

1. The present Legislative Council appropriation will revert to the general fund on February 21, 1959.

2. The amount remaining unexpended in that appropriation on that date may be reappropriated by the 1959 Legislature for the period from February 21, 1959, to July 1, 1959.

Very truly yours,
FORREST H. ANDERSON
Attorney General