

Opinion No. 41**SPECIAL FUNDS; Water Analysis Fund; Special Examination Fund; Fire Protection Fund; Timber Stand Improvement Fund; Slash and Brush Disposal Fund;—SECTION 84-1902, REVISED CODES OF MONTANA, 1947.**

Held: Chapter 14, Session Laws of 1941 has no application to (1) Water Analysis Fund (146), (2) Special Examination Fund (235), (3) Fire Protection Fund (155), (4) Timber Stand Improvement Fund (100), (5) Slash and Brush Disposal Fund (156), since they are special funds established through moneys derived from a special purpose and are used solely to defray the cost of the said special purpose. That without these funds the special purpose in each instance would be rendered inoperative. Hence the funds are not illegal.

April 12, 1962

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

Dear Mr. Tidball:

You have asked whether the maintenance of the following special funds is illegal in view of Section 84-1902, Revised Codes of Montana, 1947: (1) Water Analysis Fund (146), (2) Special Examination Fund (235), (3) Fire Protection Fund (155), (4) Timber Stand Improvement Fund (100), (5) Slash and Brush Disposal Fund (156).

Section 84-1902, Revised Codes of Montana, 1947, provides in part:

"That all moneys collected or received by or paid over to the . . . State Board of Health . . . the State Examiner and State Forester by way or on account of fees, license, or for any other purpose, on and after July 1, 1941, shall be paid over to the State Treasurer who shall deposit the same to the credit of the general fund of the state."

Funds Number 155 and 156 have been specifically held to be without the scope of Chapter 14, Session Laws of 1941, Report and Official Opinions of the Attorney General, Volume 19, Opinion No. 231. At Page 371 of that opinion it is said:

". . . keeping in mind the purposes of Chapter 14, it can hardly be said that the legislature intended by Chapter 14 to repeal any of said acts or to make them ineffective in operation. It was not

necessary to do so in order to give full effect to Chapter 14. These acts may all be read together and each given effect." (Citations omitted.)

The following cases considered statutes setting up funds for a special purpose. In each case a question was raised as to the right of the department to maintain these funds in view of a general statute seeking to place them in the general fund. In each case the constitutional provisions are similar to those in Montana.

In *Riley v. Forbes*, 227 Pac. 768 Cal (1924), a State Board of Accountancy was created in 1901 and was allowed to use the fees it collected to defray its cost of operation. In 1905 a law was passed which provided in part:

"All moneys belonging to the state received from any source (shall) be paid into the State Treasury."

The court held at Page 771:

"But when the Legislature has acted . . . and directed that the (funds) shall be collected and disbursed in a particular way for a particular purpose . . . it may reasonably be concluded that the Legislature intended that such funds should be devoted to the support of the . . . board . . ."

See also *State v. Benson*, 189 Pac. 1000, Wash. (1920), (holding that funds derived from the state fair may be used to operate the state fair, with only the remaining balance to be paid into the general fund) *State v. Yelle*, 201 Pac. 2d 172, Wash. (1948), (holding that funds derived from the employees' retirement system are special purpose funds and do not go into the general fund). *State v. Yelle*, 82 Pac. 2d 120, Wash. (1938), (holding that funds derived from the state toll roads are to be used for that purpose and not paid into the general fund).

It would thus appear that when a fund, such as the ones in question here, are special purpose funds to defray the cost and expense of the service rendered by a state agency pursuant to a specific statute, they are without the scope of a general statute directing all state moneys to go into the general fund. (*State Aeronautics Commission v. Board of Examiners*, 121 Mont. 402, 194 Pac. 2d 633, (1948).

This problem was presented in part in *Brackman v. Kruse*, 122 Mont. 91, 103, 199 Pac. 2d 971 (1948). In the *Brackman* case the court discussed the effect of Chapter 14, Session Laws of 1941 on Section 3645, RCM, 1935, which section directed that all moneys collected by the Department of Agriculture were to be credited to that department. Section 3645, supra, was specifically repealed by Chapter 14, Session Laws of 1941. But the Court said:

". . . and at the time of the enactment of the original Act the special fund was in effect the same as the special fund referred to in the case of *Flynn v. Horst*, 356 Pa. 20, 51 A 2d 54."

In the Flynn case, *supra*, at Page 58, of the Atlantic Reports, the Pennsylvania court said:

" . . . by Section 12 of the Act, it is definitely provided the money paid into the Treasury under the provisions of this act shall constitute a special fund, for the use of the Department of Agriculture in enforcing the law. The Fiscal Code of 1929, 72 P.S. Section 1, et seq., abolished all special accounts except certain ones, and the Oleomargarine Fund was not excepted, but this did not change the facts under the Oleomargarine Act the license fees were designated for a special purpose."

It is well to note that both the Aeronautics Commission case, *supra*, and the Brackman case, *supra*, were decided subsequent to Opinion 231, Volume 19, Report and Official Opinions of the Attorney General *supra*. Both cases recognize that special funds created to defray the expense of a special duty are without the scope of Chapter 14, Session Laws of 1941. What is said in Opinion No. 231, has equal application to all the funds here in question.

It is therefore my opinion that Chapter 14, Session Laws of 1941 does not apply to the special funds here in question and these special funds are not being illegally maintained.

Very truly yours
FORREST H. ANDERSON
Attorney General