

**Appropriation—Fiscal Year—Public Printing.**

The State Auditor is without authority to issue a warrant for the payment of claims against the public printing fund when the same has been exhausted, and an appropriation made for public printing for the fiscal year 1906, cannot be drawn upon or used in payment of claims for public printing in the year 1905, or for claims accruing in 1905.

Helena, Montana, May 20, 1905.

Hon H. R. Cunningham, State Auditor, Helena, Montana.

Dear Sir:—Your request for an opinion from this office as to your power and authority to issue a warrant for the payment of certain printing bills, the appropriation made by the legislature therefor for the year 1905 having been exhausted, appears to be based upon the following statement of facts:

The ninth legislative assembly in the general appropriation bill, appropriated \$12,000 for public printing for the year 1905 and \$12,000 for the same purpose for the year 1906. The amount appropriated for the year 1905 has been exhausted, and there now remains certain unpaid bills which have been audited by the state board of examiners, for the payment of which warrant is demanded.

By the provisions of Subdivision 17 of Section 420, Political Code, the auditor cannot draw a warrant "unless authorized by law, and upon an

unexhausted specific appropriation provided by law to meet the same." Section 12, of Article 12, of the state constitution, reads:

"No appropriation shall be made or any expenditure authorized by the legislative assembly whereby the expenditures of the state during any fiscal year shall exceed the total tax then provided for by law, and applicable to such appropriation or expenditure, unless the legislative assembly making such appropriation shall provide for levying a sufficient tax, not exceeding the rate allowed in Section Nine (9) of this Article, pay such appropriations or expenditures within such fiscal year. This provision shall not apply to appropriations or expenditures to suppress insurrection, defend the state, or assist in defending the United States in time of war. No appropriation of public moneys shall be made for a longer term than two years."

The fiscal year for state purposes "commences on the first day of December of each year, and ends on the last day of November of each year." (Section 3821, Political Code.) Under the section of the constitution above quoted, an appropriation can be made for two years, but the clause therein "expenditures of the state during any fiscal year shall not exceed the total tax then provided for by law," seems to mean that the appropriation for each year must be separate and distinct from any other year.

When the legislature made the appropriation of \$12,000 for this specific purpose for the year 1905, it is presumed that a tax was "provided for" sufficient to meet this "expenditure," and the expenditure being for a specific purpose, the amounts specified by the legislature is conclusive. No administrative or executive officer can increase the amount, for that would be, in effect, making a new appropriation, and all appropriations for state purposes must be made by the legislature. This is a power inherent in the legislature. It is the duty of the legislature to see that the indebtedness of the state does not exceed the constitutional limit. (Art. 13, Sec. 2.) This it can do only by controlling the appropriations.

The tax provided for to meet the appropriation of \$12,000 for the year 1906 cannot be levied or collected in the year 1905; hence, there is no provision of law for raising by taxation any sum of money "applicable to such appropriation or expenditure" for the year 1905, except the sum of \$12,000.

The legislature has the undoubted authority to limit the expenditure for "any fiscal year" to a specific sum, and when that amount has been expended the "specific appropriation" is exhausted, and any warrant drawn in excess of that amount is violative of Subdivision 17 of Section 420, Political Code. And if such warrant were drawn its payment could be enjoined, under Section 34, Article 5 of the constitution, which provides that no money shall be paid out of the treasury except upon appropriations made by law, and on warrant drawn by the proper officer in pursuance thereof, except interest on the public debt. That part of the constitutional provision "unless the legislative assembly making such appropriations shall provide for levying a sufficient tax," etc., cannot apply to an appropriation of a fixed sum for a specific purpose, for, if the money so raised passed into the general fund, no officer, in the absence of legislative

provision, would have the authority to transfer it to a specific fund, for this would also be increasing a legislative appropriation.

Section 689, Political Code, provides:

"If no appropriation has been made for the payment of any claim presented to the board (board of examiners) the settlement of which is provided for by law, or if an appropriation made has been exhausted, the board must audit the same, and if they approve it, must transmit it to the legislative assembly with a statement of their approval."

A deficiency may exist in the year 1905 as well as in the year 1906, and where the amount appropriated and authorized to be used for this special purpose in the year 1905 has been exhausted, and there remains unpaid just claims against the state, a deficiency does exist in the same manner that it would if no appropriation had been made for the year 1906.

These constitutional and statutory provisions have never been given a judicial construction by our supreme court. The decisions in *State v. Cook*, 14 Mont. 332, and *State v. Cook*, 13 Mont. 465, are not in point. Neither are the Illinois decisions therein cited.

Under this view of the law it is apparent that you are not authorized to issue a warrant against this fund after the \$12,000 appropriated for public printing for the year 1905 has been exhausted. (See *State vs. Moore*, 37 Neb. 229, s. c. 55 N. W. 635). I would recommend that you refer all claims back to the board of examiners, since there are still funds on hand belonging to the public printing appropriation for 1905, but not sufficient to pay the amount of claims by said board already approved.

Respectfully submitted,

ALBERT J. GALEN,

Attorney General.