

Warrants, Registration Of—State Educational Institutes—Reform School.

Warrants presented for payment out of funds realized from the sale of lands granted for educational institutions should not be registered, nor should warrants drawn upon a bond fund created for the purpose of erecting buildings for educational institutions be registered.

The reform school is an educational institution and not a penal institution and is governed by the laws relating to educational institutions.

Helena, Montana, Oct. 12, 1905.

Hon. J. H. Rice, State Treasurer, Helena, Montana.

Dear Sir:—Your letter of October 10, asking for an opinion upon the following propositions, duly received.

"1. Will you kindly inform this office as to whether warrants covered by your decision of yesterday, are entitled to registration?"

"2. Also, whether the Reform School at Miles City is to be considered as one of the educational institutions of the State?"

In answer to the first question, you are advised that warrants presented to you for payment out of the fund realized from the sale of lands granted for educational institutions should not be registered by you, nor should warrants drawn upon the bond fund created for the purpose of erecting buildings or institutions of learning be registered by you.

Section 442, Political Code, as amended by the laws of 1899, p. 98, provides for the registration of state warrants regularly issued. But Section 2 of said law, as amended, expressly provides that "nothing herein contained shall be construed to apply to any warrants issued on account of any land grant fund, or by virtue of any special act authorizing the issuance thereof." This language clearly shows that the law relating to the registration of warrants, which are presented and not paid for want of funds, does not apply to any land grant funds—that is, to the funds received from the sale or bonding of lands granted for educational purposes.

As to your second question, you are advised that the Reform School at Miles City is a school and not a penal institution. The supreme court at Washington, in re Mason, 3 Wash. 612, in discussing the character of the state reform school of Washington, said:

"In the first place, the reform school is not in any sense a penal institution or a prison, but a school. Three classes of infants may be committed there: (1) Those who have neither homes nor friends—vagrants; (2) those who have homes and friends, but are unmanageable there; (3) those who have been convicted of offenses against the laws of the state less than murder or manslaughter. Those in the first two classes have committed no legal offense, but the state, in the absence or inability of friends to control and care for them, charitably takes them into its own charge, and proceeds to educate them in all the branches taught in the public schools, of the state, as well as in morals, temper-

ance, frugality and industry. They are not subject to the penal laws of the state, have no right to trial by jury."

The supreme court of Ohio, in *Prescott v. State*, 19 O. St. 188, in discussing the same question, said: "The commitment, (of the children to a reform school) in cases like the present, is not designed as a punishment for crime, but to place minors of the description, and for the causes specified in the statute, under the guardianship of the public authorities named, for proper care and discipline, until they are reformed, or arrive at the age of majority. The institution to which they are committed is a school, not a prison; nor is the character of their detention affected by the fact that it is also a place where juvenile convicts may be sent, who would otherwise be condemned to confinement in the common jail or penitentiary." (To the same effect see, 4 *Wharton*, (Pa.) 11; see also 10 *American Asylum v. Phoenix Bank*, 10 Am. Dec. (Conn.) 112, where the supreme court held that an asylum for the education of the deaf and dumb was a school; see also *Scott v. Flowers*, 84 N. W. (Neb.) 81; *Ex parte Nichols*, 43 Pac. (Cal.) 79.)

The word "school is defined by the American and English Encyclopaedia of Law, Vol. 25, p. 7, as follows:

The word 'school' in its broad sense is applied to any institution of learning, whether of low or high grade, or whether it is public or private in its character. Schools may differ from each other in other respects, but they are all alike in this respect, that they require a master or instructor who teaches, and pupils who receive instruction at his hand. Indeed, the term 'school' according to American usage more generally denotes the collective body of pupils in any place of instruction and under the direction and discipline of one or more instructors."

The supreme court of Kansas, in *re Sanders*, 23 L. R. A. 605, in defining the word "school," said:

"A 'school' is defined as 'an institution for learning; an educational establishment; a place for acquiring knowledge and mental training; 'an assemblage of scholars, those who attend upon the instruction in a school of any kind;' 'a body of pupils, collectively, in any place of instruction, and under instruction of one or more teachers;' 'the disciples or followers of a teacher;' and 'any place or means of discipline, improvement, instruction, or training.'"

Section 3080, Penal Code of Montana, reads as follows:

"All the branches taught in the public schools of the state shall be taught in the reform school, and the inmates shall be taught and trained in morality, temperance and frugality, and they shall also be instructed in the different trades and callings of the two sexes as far as possible in the scope of the institution."

From the reading of this section, and the above authorities, there can be no question but what the reform school is an educational institution and not a penal institution.

Yours very truly,

ALBERT J. GALEN,

Attorney General.