

Reform School Building Fund—Payment of Warrants—Insurance Money, Warrants Drawn Thereon.

Under Section 3099, Penal Code, the reform school building fund consists of money derived from the sale of timber and from the sale or leasing of lands granted to the State for a reform school. As the Enabling Act and constitution provide that the proceeds from the sale of lands shall be a permanent fund, and that the interest from the investment thereof and income from leases shall only be used for the support of schools, warrants drawn against such building fund, for the purpose of erecting buildings, is a diversion of the fund and in violation of the constitution.

After buildings have been completed and paid for out of such fund it constitutes a complete diversion of the same. The State must replace such diverted funds by an appropriation of the legislature or by the issuance and sale of state bonds. Money re-

ceived as insurance from the burning of such building comes from an entirely different source, is not a part of the fund diverted, and may be used for the purpose of replacing the destroyed buildings.

Helena, Montana, Oct. 24, 1905.

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

Dear Sir:—Your requests for an opinion upon the following propositions received.

1. Can warrants lawfully be paid that are drawn against the state reform school building fund, in excess of the amount of insurance money recently received from the loss of the old buildings by fire, for the purpose of erecting or completing new buildings for such reform school?

2. Can warrants issued for the purpose of rebuilding the state reform school building at Miles City be lawfully paid out of the insurance money paid for the loss of the old building, and now deposited in the state treasury to the credit of the state reform school building fund?

In an opinion given by this office to you on October 9, 1905, it was held that the proceeds from the sale of lands granted by congress to the State for educational purposes was a permanent fund and that the interest and income derived from the investment of such fund or from the leasing of lands alone was to be used, and that such use was limited to the support and maintenance of the schools and not for the purpose of erecting buildings. In an opinion given you by this office on October 12, 1905, it was held that the state reform school at Miles City was an educational institution, and, therefore, was covered by the former opinion given on October 9.

In answer to the first question, you are advised that the money in the state reform school building fund, other than that received from the fire insurance companies, consists of the proceeds derived from the sale of timber and from the sale or leasing of such lands as have been or may be granted the State of Montana for the state reform school. (See Section 3099, Penal Code.) Therefore, under the enabling act and the constitution of this state, and in accordance with the opinion give you on October 9, you are advised that any warrants drawn against said building fund in excess of the insurance money are void, for the reason that it would be a plain diversion of the permanent public school fund from the purposes for which it was intended that the same should be used.

As to the second question submitted, you are advised that the funds used out of the state reform school building fund for the purpose of erecting the old reform school buildings was a diversion of the proceeds received from the land grants to the State of Montana for a state reform school. However, when such buildings were completed such diversion was complete, and, under Section 3 and 12 of Article 11 of the State constitution, it became the duty of the State to replace the money in said fund so diverted, and that duty still remains to be performed by the State. The money received from the insurance companies for the loss of the building is not the money diverted at the time the original buildings were

constructed. It comes from an entirely different source, and, under the usual clauses contained in insurance policies, the insurance companies would have had the right to have replaced the reform school buildings in lieu of a cash settlement. The fact that the original buildings were burned should not have the effect of placing the reform school in any worse position than that of other educational institutions, where money has been diverted for the purpose of erecting buildings that are still standing. The only way that the State can replace the money so diverted for the purpose of erecting the buildings of other educational institutions is by an appropriation of the legislature or by the issuance of bonds for the purpose of raising the money, and such method should be followed in replacing the money diverted for the purpose of erecting the original buildings of the reform school.

You are therefore advised that the money received by you from the insurance companies, being no part of the money originally diverted from the land grant funds, may now be used for the purpose of rebuilding the reform school buildings destroyed by the recent fire, and warrants drawn against the reform school building fund, to the amount of insurance received by you and credited to such fund, should be paid upon presentation.

Respectfully submitted,

ALBERT J. GALEN,

Attorney General.