

Appropriations, Use Of.

Under authority of State v. Cook, 14 Mont. 333, a balance or unused portion of an appropriation for the first of two fiscal years for which appropriation is made for a specific purpose by the legislative assembly may be transferred and added to the appropriation made for the second fiscal year.

Helena, Montana, Nov. 10, 1905.

Hon. Joseph K. Toole, Helena, Montana.

Dear Sir:—Your verbal request for an opinion on the following ques-

tion received: Should the unused portion, if any, of the four thousand dollars appropriated to pay "the expenses of the Board of Administration of the Farmers Institute" for the fiscal year ending November 30, 1905, be turned back into the general fund of the State at the close of the fiscal year of 1905, or may it be carried over and used for the purposes of said institute during the fiscal year of 1906?

Section 12, Article 12, of the State Constitution provides that the appropriations for any fiscal year shall not exceed the revenues received from the taxes levied for such fiscal year. Therefore, the Legislature in making appropriations to meet the expenditures of the fiscal year must pro rate the revenues to be used for various State purposes so that the aggregate of the appropriations for any year will not exceed the revenue received for that fiscal year. It was held in an opinion of this office to the State Auditor of May 20, 1905, that when an amount appropriated for specific purposes out of the revenue to be received in any fiscal year from taxation had been exhausted, no more warrants should be drawn against the fund created by said appropriation, for the reason that all the revenues that could be possibly used for such purposes out of the taxes of that fiscal year was then expended.

But the question now presented is an entirely different matter and was not considered in the opinion referred to above. Said Section 12 of Article 12 of the Constitution further provides that "No appropriation of public moneys shall be made for a longer term than two years." Under this last clause there can be no question but that the legislature can make an appropriation for a specific purpose for a period of two years. However, the legislature in making such appropriation must designate what portion of the appropriation shall be paid out of the taxes received for each fiscal year of said two year period. No greater sum can be used for any specific purpose out of the taxes for any fiscal year than the amount appropriated from the taxes for such year for that purpose. But when an appropriation of a certain amount is made for two years for a certain purpose under the constitutional provision authorizing the legislature to make appropriations for a term of two years, the general rule seems to be that the total amount of such appropriation is set apart for the specific purpose named therein for the entire period of two years. The only limitation upon such appropriation being the amount thereof that can be paid each year out of the taxes received from the levy for that year. The legislatures of most of the states having constitutional provisions similar to ours, instead of dividing their appropriation bills into two sections; the first naming the amount of the appropriation for any purpose for the first fiscal year, and the second naming the amount of the appropriation for the same purpose for the second fiscal year, make their appropriations for two years all in one section. For instance, the legislature simply provides in one section that there shall be appropriated the sum of eight thousand dollars for the fiscal years ending November 30, 1905, and November 30, 1906, designates what portion of the appropriation shall be taken from the taxes of each fiscal year. Such an appropriation has been held to be a continuing appropriation for the full term of two years, but that at the end of two years it lapses by virtue

of the constitutional provision and goes back into the general fund of the State.

State ex. rel. Null, vs. Mayhew, 10 S. D. 365.

"Unless there is a special provision in the act itself, declaring that if the money is not used at the time stated the appropriation shall lapse," the appropriation will continue until the close of the second fiscal year.

State ex. rel. Dales, vs. Moore, 36 Neb. 579.

"By a well settled construction of this provision of the constitution, all appropriations, whether general or special, when otherwise unlimited, will continue in force and be effective for the purposes for which they were made until the expiration of the first fiscal quarter after the adjournment of the next regular session of the legislature, at which time all appropriations must lapse and cease to be of any effect."

The People ex. rel. vs. Swigert, 107, Ill., 500.

The Supreme Court of Montana in the case of State vs. Cook, 14 Mont. 333, in considering an appropriation bill worded somewhat differently from the one now under consideration said: "The appropriation involved is for specific purpose, and is for two years. We think the appropriation in question being for two years, is subject to any terms and liabilities that may be incurred by the State's agents during the whole period that it was intended by the legislature that it should continue."

The act construed in this case by our Supreme Court appropriated forty-two thousand dollars for the year 1893 to be used in the construction of an eastern prison, and thirty thousand dollars for the same purpose for the year 1894.

From the above construction of constitutional provisions, similar to ours, and from the opinion in the case of the State vs. Cook, we are of the opinion that an appropriation made by the legislature of this State for a specific purpose continues in force, and the money so appropriated can be used for said purpose at any time during the term of two years for which the legislature can make appropriations for specific purposes, provided we have no law expressly declaring to the contrary.

House Bill No. 292, Laws of 1905, page 384, at section 1, provides: "That the following sums, or as much thereof as may be necessary, be, and the same is hereby appropriated for the objects hereinafter expressed, for the fiscal year ending November 30, 1905." There is no express declaration in this act that the money appropriated from the taxes of 1905, should not be used for the purposes for which it was appropriated after November 30, 1905. Nor do we find any other law, except the constitutional provision, which limits the period during which money appropriated for a certain purpose may be used for such purpose.

In our opinion the clause "for the fiscal year ending November 30, 1905" simply limits the amount of the appropriation for the Farmers Institute that may be taken from the taxes levied for the fiscal year ending November 30, 1905, and does not limit the time within which such money can be used.

We are therefore of the opinion, that any balance or unused portion of the four thousand dollars appropriated for the farmers institute out of the taxes of 1905, does not on November 30, 1905, return to the credit of

the general fund of the State, and that the same may be used for the purpose for which it was appropriated at any time prior to November 30, 1906, when, by virtue of section 12, article 12, Constitution, all appropriations die.

Very respectfully,

ALBERT J. GALEN,

Attorney General.