

**Appropriations, Use Of.**

Under authority of *State v. Cook*, 14 Mont. 333, when a specific appropriation is made for a specific use for the two ensuing fiscal years, and the amount appropriated for the first year becomes exhausted, items of expense thereafter incurred during such fiscal year may be paid by warrant drawn against the amount appropriated for the succeeding fiscal year when that year is reached and the money available for payment of such specific items. Until the year 1906 is reached, however, the Auditor is not authorized to draw his warrant, because there is no fund available.

Helena, Montana, Jan. 5th, 1906.

State Board of Examiners, Helena, Montana.

Gentlemen:—On May 20th, 1905, an opinion was rendered by this office to State Auditor H. R. Cunningham to the effect that when the amount of money appropriated by the Legislative Assembly for specific purpose for a given year had been exhausted, no more warrants could

be drawn. This opinion was based upon the reason and theory, under our constitution, that it rests within the absolute inherent power of the Legislative Assembly, not only to provide the revenues for the conduct of the State Government and the means of collecting same, but also to limit and restrict the amount of expenditures in connection with the running of the state government, or any department thereof, for each of the two fiscal years intervening sessions of the legislative assembly. Moreover, it is quite apparent that moneys appropriated for 1906 by the legislative assembly could not properly be drawn upon by the Auditor before they were available. And accordingly, where an appropriation made for a specific purpose for the year 1905 had become exhausted prior to the close of the fiscal year, there was no fund available upon which the Auditor might draw his warrant. And where there is no fund created by legislative appropriation, or by special tax levy pursuant to law, the Auditor is by the Constitution prohibited from drawing his warrant, even though the claim be a legitimate one and authorized by law.

Subsequently on, the 10th day of November, 1905, in an opinion rendered by this office to Governor Joseph K. Toole, it was held upon the authority of *State v. Cook*, 14 Mont. 333, that any balance or unused portion of an appropriation made for specific purpose for the year 1905, might be transferred and added to the amount of appropriation made for the next ensuing fiscal year rather than permitted to lapse into the general fund, upon the theory that all appropriations were made for two years continuously.

It seems to us perfectly clear and plain, that when the legislative assembly provides in an appropriation bill, for instance, "for the year 1905, for office and traveling expenses of Attorney General, \$400.00, or so much thereof as may be necessary", (the adequacy of which amount we do not concede), the attorney general is thereby limited for office and traveling expenses incurred in the year 1905 to that specific sum, and, in the event that there be any surplus remaining, it should be properly returned to the credit of the general fund. And that debts incurred in the year 1905 in excess of that amount should not properly be paid out of a like appropriation made for the year 1906. It seems to us quite clear that the appropriation is made for a specific time and purpose and cannot properly be diverted to any other use, but our Supreme Court, in the *Cook* case, above cited, has construed the law contrary to our view, and held that the unexhausted portion for the year 1905 for instance, should properly be advanced and credited to the appropriation made for the same purpose for the ensuing fiscal year.

This case is not in accord with our view of the law or construction of the State Constitution. However, it is the opinion of the Supreme Court and, until it is reversed or modified, must guide us in the execution of the law.

At this time the question arises whether or not, when the fiscal year 1906 is reached, and the appropriation therefor available, claims incurred in 1905 in excess of the appropriation made for that year may be paid by warrant drawn against the 1906 appropriation?

In answering this question, I will not make a review of the authori-

ties, as sufficient reference has been made to them in the other opinions rendered by this office herein referred to, and we are unable to find any authority to sustain an affirmative reply to this question other than the Cook case herein above cited. If the unused balance of an appropriation made for a specific purpose for the year 1905 can be transferred to the appropriation made for 1906 and used for expenses incurred in 1906, we can see no good reason, under the law or on principle, why legal obligations incurred in 1905 cannot be paid from the 1906 appropriation when the same is available, and we therefore hold, and you are advised, upon authority of our Supreme Court decision above referred to that, when the fiscal year 1906 is reached, and the moneys appropriated by the legislative assembly for that year are available for the payment of specific items of expense, that unpaid bills for 1905 approved or not paid because of the exhaustion of the appropriation of that year, may properly be paid from the moneys appropriated for like purposes for the year 1906.

Respectfully submitted,

ALBERT J. GALEN,

Attorney General.