

**Educational Institutions, Use of Income Fund. Income Fund,
Use Of. Bonds, Educational Institutions, Payment Of.**

The income funds of the various educational institutions of the state accumulating up to February 28, 1909, may be used to reimburse the general fund for moneys appropriated out of the general fund to pay the current expenses of said educational institutions in order that the same may be used by the board of examiners to redeem outstanding bonds of such institutions.

Helena, Montana, April 17, 1908.

Hon. Edwin L. Norris,
Governor of Montana,
Helena, Montana.

Dear Sir:—

Your letter of the 3rd inst. received, enclosing a letter from Hon. Walter S. Hartman, president of the executive board of the agricultural college, in which he protests against the procedure determined upon the state board of examiners, wherein it proposes to use the income funds

standing to the credit of the various educational institutions prior to February 28th, 1909, for the purpose of reducing the outstanding indebtedness incurred in the names of such institutions.

You request an opinion as to the legality of the procedure adopted by the board.

The protest of Mr. Hartman is based largely upon the decision of the supreme court in the case of State vs. Rice, 33 Mont. 365. He claims that inasmuch as the opinion in said case holds that "the interest from the invested funds and the rents from lands belonging to the grant, shall be used for the maintenance and perpetuation of the normal school, and for no other purpose;" that the state board of education has no authority to order such interest from invested funds and rent from lands to be used for the payment of outstanding indebtedness incurred in the names of these various educational institutions; and, on the other hand, he claims that the same must be used solely for the payment of current expenses of such institutions.

As an abstract proposition of law, and under normal conditions, there would undoubtedly be merit in the contention of Mr. Hartman; but for many years past, these income funds, which should not have been used only for paying current expenses of said institutions, have been used to pay the interest on the bonds issued in the name of such institutions, and which bonds were held void in the said case of State vs. Rice.

Whenever such income fund was so used, it became necessary to appropriate an equivalent sum of money out of the general fund of the state, to pay the current expenses of such institutions. In fact, all of the income fund was used for purposes other than the payment of current expenses, whereby appropriations out of the general fund were made to pay all current expenses of the institutions, which far exceeded the total income fund. Inasmuch as these income funds in the past have been used for other purposes than paying the current expenses of the institutions, the legislature did not take such income fund into consideration in making appropriations to pay the current expenses of the institution.

The last legislative assembly appropriated out of the general fund the full amounts it estimated were necessary to pay the current expenses of each of the educational institutions for the two years ending February 28th, 1909. This is conclusively shown by reference to the appropriations out of the general fund by the legislatures of 1903 and 1905, when the educational institutions were in no way relying upon the income fund to pay current expenses.

For example, the legislature of 1903 appropriated \$20,000 for the maintenance of the agricultural college, and in 1905 appropriated \$23,500 for the same purpose, while in 1907 it appropriated \$38,500 for the same purpose.

Therefore, it is apparent that the legislature did not intend that any of the income fund would be used during the fiscal year ending February 28th, 1909, for the purpose of paying current expenses which had been fully provided for by appropriations.

The last legislature also provided, by Senate Bill No. 124 (Laws 1907, page 536), that 'all money in the general fund, to an amount not exceeding \$200,000, which was otherwise not appropriated for executive, judicial or other purposes, is hereby appropriated for the two years ending February 28th, 1909,.. for the purpose of paying the bonds theretofore issued in the name of the various educational institutions.

The policy of the legislature, as shown by this law, is to reduce this outstanding indebtedness as much as possible, by using the available cash on hand and thus reducing the bonded indebtedness, which will be necessary to take up the balance of this outstanding indebtedness.

Such was the status of these various income funds when the state board of education met in April, 1908.

While the decision in State vs. Rice, in effect made all the bonds issued in the names of the several educational institutions void, nevertheless the moral obligations of the state, to see that the money it had received for use in building up its various educational institutions was repaid, still remained.

If the income funds in the past had been used to pay current expenses of the institutions, to that extent, the state would not have had to appropriate money out of its general fund for such purpose, and would therefore have such money on hand to use in paying these outstanding bonds, in accordance with the provisions of said Senate Bill No. 124, referred to above.

It is apparent from the language of the resolutions adopted by the state board of education that said board considered that the income funds owed the general fund a sum equivalent to the amount of the income funds wrongfully used for other purposes, and by reason of which an equal amount was taken out of the general fund to pay current expenses that should have been paid by the income fund.

We agree with Mr. Hartman that the income fund should be used only to pay current expenses of the educational institutions; but if money is taken out of the general fund to pay such current expenses, and then an equivalent sum is taken from the income fund to reimburse the general fund, has not the income fund in fact, though indirectly, been used to pay such current expenses?

The fact that money in the income fund has been wrongfully used, would make no difference, as the general fund should be reimbursed for the money taken out of it to pay expenses that legally should have been paid out of the income fund.

Therefore, the state board of education decided to place such income funds as may be available up to February 28th, 1909, (such being the period for which appropriations have been made out of the general fund to pay the current expenses), to the credit of the general fund, for the purpose of being used by the state board of examiners in paying outstanding bonds of the educational institutions, in the manner provided by said Senate Bill No. 124.

Has the state board of education authority to say that when money has been taken from the general fund to pay current expenses of these

institutions which should have been paid out of the income fund, that then the money on hand in such income fund shall be placed in the general fund, in order that such general fund can be used to redeem bonds outstanding in the name of the educational institutions?

In State vs. Barret, 26 Mont. 62, our supreme court, in discussing the powers and authority of the state board of education, said:

"From the various provisions of the constitution cited and the statutes enacted to carry out their evident intention, it is apparent that the state board of education is vested with the exclusive power to receive, invest, manage and control the funds derived from the sale of the lands granted to the state for the use and support of the agricultural college, and that the income therefrom is subject to the orders of the board to meet the current expenses of the institution."

You are therefore advised that, in our opinion, the state board of education had ample authority to make the order, placing the income fund that may be available prior to February 28th, 1909, to the credit of the general fund, to be used by the state board of examiners, under said Senate Bill No. 124, in paying the indebtedness of the educational institutions, and that when it did so it did not change the use of such funds from that intended by the enabling act and the constitution, as it was simply reimbursing the general fund for money which had been taken out of it to pay the identical expenses that it was intended should be paid directly out of the income funds.

The action of the state board of examiners being based upon the authority given it by such order of the state board of education is, in our opinion, valid.

Very respectfully,
ALBERT J. GALEN.
Attorney General.