

Agricultural College Income Fund. Income Fund, Use Of.

The income fund of the agricultural college having been used in the past to pay running expenses of the college, in accordance with the act of Congress of 1862 could not legally be used for the purpose of paying of invalid bonds of such college. Ten thousand dollars of said fund having been so used the state board of examiners have authority to transfer said amount from the general fund to the credit of the income fund.

Helena, Montana, November 4, 1908.

State Board of Examiners,
Helena, Montana.

Gentlemen:

In an opinion given by this office on August 17 last to governor Norris regarding the authority of your board to use the income funds of the various educational institutions of the state to pay off bonds heretofore issued in the name of said institutions and held invalid by decisions of our supreme court and the supreme court of the United States, we held that you had the authority to so use such income funds. Thereafter, Hon. Walter S. Hartman, president of the executive board of the agricultural college, and president Hamilton of the same college, took up the matter with this office and submitted a statement showing that the income received from the grant of ninety thousand acre of lands to the agricultural college has all been used each year for the specific purposes enumerated in the law making such grant. However, such showing of facts was not made until after the state treasurer had paid out the ten thousand dollars in cancelling bonds of the institution to that amount. In the opinion rendered on August 17, we were of the impression that the income fund of the agricultural college had been used for paying interest on these bonds in the same manner that the income fund of the other educational institutions had been used, and we had no facts or reports from the officers of the agricultural college showing anything to the contrary, and it was upon such promises that we rendered the opinion.

However, upon receiving, on October 9, the report showing that this income fund had actually been used for paying certain current expenses of the college, and after a careful examination of the Act of Congress of 1862 (12 Stat. 508; 22 Stat. 484) granting lands to the agricultural college and which act provides the purposes for which such income fund may be used, and further provides if such funds are not used for such purposes that the same shall be replaced by the state to which it belongs, we reached the conclusion that our former opinion on August 17 was incorrect, so far as it related to the ten thousand dollars taken out of the income fund of the agricultural college.

This raises the question as to how this money can be returned to the credit of the income fund. Senate Bill 124, laws of 1907, p. 536, by Section 3 thereof, appropriates any money in the general fund to an

amount not exceeding two hundred thousand dollars which is not otherwise appropriated for executive, judicial or other purposes, to be used for the purpose of paying off the invalid bonds of the various educational institutions. As the state board of examiners used ten thousand dollars of the income fund of the agricultural college for the purpose of paying off these bonds, instead of taking that amount out of the general fund, in our opinion the board of examiners now has the authority to order the treasurer to transfer from the general fund to the income fund of the agricultural college the said sum of ten thousand dollars, in as much as the limit of two hundred thousand dollars appropriated by said Section 3 has not yet been used in the payment of these bonds.

Respectfully submitted,

ALBERT J. GALEN,
Attorney General.