

Appropriations, lapse Of. Funds.

Under the provisions of the constitution no appropriation can be made for a period longer than two years, but the appropriation made for the sheep indemnity and inspection fund does not lapse because a greater amount than that which was appropriated is shown to have been expended.

Helena, Montana, November 28, 1908.

Mr. Jas. H. Rice,
State Treasurer,
Helena, Montana.

Dear Sir:

Your request for an opinion upon the following question received.

Can the appropriation of \$19,000.00 made by Sec. 9 of Chap. 173, Laws of 1907, be transferred to the credit of the "Sheep Inspection and Idemnity Fund". and when so transferred does it become a continuing fund or does it lapse and revert to the general fund as other appropriations?

Prior to the tenth legislative session the sheep inspection and idemnity fund was raised by means of a special tax and was therefore not controlled by constitutional provision prohibiting appropriations for longer periods than two years, but by Chap. 172, Laws 1907, this law authorizing a special tax levy was repealed. Thereupon the appropriation of \$19,000 was made out of the general fund to pay the expense, or so much thereof as may be necessary, incurred under the provisions of said Chapter 173. It will be noticed that this appropriation makes no mention of the length of time for which it was made; it does not say for the year 1907 and for the year 1908, nor for the fiscal year.

It is fundamental that "no appropriation of public moneys shall be made for a longer term than two years."

Art. 12 Sec. 12, State Constitution.

Therefore no part of the appropriation of \$19,000.00 can be continued for a longer period than two years from the date when it was made, which was March 8th, 1907.

The supreme court of Missouri in the case of Glasgow vs Rowse, 43 Mo. at page 487, said:

"The word 'year', as used in the law, necessarily has reference to either a calander or fiscal year. Unless otherwise expressed the word 'year' will always be intended to mean a calander year, but when applied to matters of revenue the presumption is in favor of its referring to a fiscal year."

Section 2529, Rev. Codes, defines a fiscal year as follows:

"A fiscal year for state and county purposes commences on the first day of December of each year and ends on the last day of November of each year."

So far we have dealt only with the legislative appropriation of \$19,000.00. It appears, however, from the records, that \$8,009.38 have been received from taxes heretofore delinquent and from inspection fees, which sum was paid in for a special purpose and cannot lapse into the

general fund nor be used for any other purpose than that for which it was collected. The total amount received by this fund then is \$19,000.00 appropriated, plus \$8,009.38, making a total of \$27,009.38. Of this amount it appears that \$20,549.04 have been expended, leaving a balance to the credit of this fund of \$6,460.34, which is less than the amount received from taxation and fees, and the amount expended is likewise in excess of the legislative appropriation. Had no money been received from taxation or from fees the appropriation would long since have been exhausted and there would now be a deficit of \$1,549.04. The money received from these special taxes and these special fees were collected and received for the special benefit of the sheep inspection and indemnity fund and cannot legally be used for any other purpose; at least without legislative authority. And as we cannot determine from facts at our command whether the money now to the credit of this fund is a part of the money received from these special taxes and fees or a part of the direct appropriation made by the legislature, you are advised that this money does not go back into the general fund at the end of the present fiscal year but should be continued to the credit of the sheep inspection and idemnity fund.

Very truly yours,

ALBERT J. GALEN,
Attorney General.