

State Fair, Appropriation for Betterments, Transfer of Portion. State Fair, Transfer of Appropriation for Purchase of Grandstand to Maintenance Account. State Fair, Appropriation for Purchase of Grandstand, Availability of for Present Use. Appropriation for Purchase of Grandstand at State Fair, Transfer of.

Held that the state auditor is justified in executing the order and direction of the state board of examiners made on April 18th, 1910, transferring certain funds from the state fair betterment appropriation; also the appropriation of \$16,000 for the purchase of the grandstand, to the state fair maintenance account, so that same may be at once available for use and thereby save interest charge to the state.

Helena, Montana, May 6, 1910.

Hon. Harry R. Cunningham,  
State Auditor,  
Helena, Montana.

Dear Sir:

I am in receipt of your favor of the 4th instant, asking my opinion respecting the legality of a certain order and direction to you from the state board of examiners, made on April 18, 1910, the order being as follows:

"That the sum of \$2,000.00 be transferred from the state fair betterments appropriation for the current year to the maintenance account of that institution, and that the \$16,000.00, appropriated by Senate Bill No. 125, for the purchase of a grandstand at the state fair, be likewise transferred to the state fair maintenance account, so that the \$18,000.00 shall be immediately available for the payment of the grandstand indebtedness."

I have given careful consideration to the order, and have examined the appropriation bill referred to, (Laws of 1909, p. 357), and give you, as my opinion, that the order should be by you followed; and, that you are perfectly safe, under the law, and in the performance of your duty, so to do.

The transfer of the \$2,000.00 from the betterments appropriation to the maintenance appropriation is justified upon the theory that because of advancements heretofore made from the maintenance fund for betterments of the fair, the betterment account is thus indebted to the maintenance account, and this \$2,000.00 can be applied to the purchase of the

grandstand, as the same is a betterment of the fair; and, while strictly speaking, under the terms of said Senate Bill No. 125, the appropriation therein made of \$16,000.00 for the purchase of the grandstand is not available until December 1, 1910, still, there is sufficient money now in the general fund to pay the amount of this appropriation, and to warrant the executive department of state in calculating that the revenue available is ample to meet this and all other appropriations for the year 1910.

Applying good business principles, and exercising the judgment and discretion which is vested in administrative officers, I believe you are warranted in drawing your warrant against this appropriation at this time, in payment for said grandstand, for, immediately, there will be a discontinuance of interest charges.

Moreover, the appropriation is made from said general fund revenues of 1910, and, in view of the present financial condition of the state, and the general fund revenue available, for the year 1910, it amounts to practically the same thing whether this appropriation is now paid out or deferred until December 1.

When this appropriation bill was passed there existed serious question as to whether there would be sufficient revenue available for the year 1910, to meet this and other appropriations, and it was for this reason that the availability of this particular appropriation was deferred, it being the plain intent of the legislature that if the state did not have sufficient revenue to meet all other appropriations for the year 1910, that this one should not be considered at all.

The question of revenue for state purposes having been settled by the supreme court, in the case of *ex rel Bennett v. Board of Examiners*, 104 Pac. 1055, the reason and necessity for deferring payment of this appropriation does not longer exist. By that decision, you recall, it is held that the revenues for state purposes for the year 1910, and continued on the basis of the levy fixed by the legislative assembly in 1909, at one and one-half mills, and that the constitution was not self-acting, so that when the taxable property of the state reached \$300,000,000.00 there would be an automatic reduction for state purposes to one and one-half mills.

Very truly yours,

ALBERT J. GALEN,

Attorney General.