

Constitutional Law, Appropriations.

A special appropriation law refunding money paid into the State Treasury operating only in favor of particular persons or private concerns is violating of the Constitution.

Helena, Montana, February 26, 1909.

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

Dear Sir:

I am in receipt of your letter of the 23rd inst., submitting for the consideration of this office the constitutionality of House Bill No. 104, passed by the present legislature of the State of Montana.

The title of this act reads as follows:

"An Act Appropriating Money for the Payment of certain Notary Public Fees Erroneously collected."

Section 1 of the Act provides:

"That the sum of fifteen (\$15.00) dollars or so much thereof as may be necessary, be, and the same is hereby appropriated out of any moneys in the State Treasury not otherwise appropriated, for the payment of the following notary public fees erroneously collected:

R. Irene Harris	\$7.50
Rene O. Arnold	7.50

\$15.00"

Section 2 of the act authorizes the auditor to draw his warrant for said sums.

The title of this act, by its terms, applies only to certain (not all)

notary public fees erroneously collected, and the first section of the act, which makes the appropriation, requires all of the money appropriated to be paid to the two persons named therein, irrespective of how many others may have equal meritorious claims for the return of notary public fees erroneously collected in the same manner, and for the same purpose, as those named in the act. The act, then, does not operate equally upon all of the class from whom such fees have been erroneously collected, but only appropriates money for the relief of the two members of that class who are named in the act; that is, a class is created consisting of two persons, and the act is made specially applicable to those persons.

Section 26, Article V., of the State Constitution, provides:

"The legislative assembly shall not pass local or special laws in any of the following enumerated cases, that is to say:

"4. * * * Refunding money paid into the state treasury."

And Section 29, of Article IV., of the constitution, reads:

"The provisions of this constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise."

A law may be general in its object and local or special in its application.

26 Am. & Eng. Enc. Law, 532.

The enumeration of all of the persons belonging to the class for whose immediate relief the law is enacted does not vitiate the law. The repayment of money expended, or the payment of expenses incurred, under and by virtue of existing law, is rather the fulfillment of prior law than the making of a new law, as the repayment of expenses incurred in the discharge of a duty enjoined by law, and which expenses the law promised to pay, for then it is by "previous authority of law."

Sec. 29, Art. 5, State Const.

Such repayment, however, is made by virtue of law general to all of the class, but there is no "previous authority of law" for any one not entitled thereto to make application for a notarial commission or to pay the fees therefor.

The small amount of this appropriation, or the parties benefited thereby, can make no difference with the principle involved. Special laws "refunding money paid into the state treasury" are prohibited by the constitution. Is this a special law within the meaning of this constitutional provision?

"A special act is one which only operated on particular persons and private concerns."

Town of McGregor v. Boylies, 19 Ia. 43.

"If a thorough and comprehensive and exact definition of the term 'special law' as used in the constitution were required it would be found perhaps that there were some differences of opinion to be reconciled; but, when the question has been presented to this or any other court, it has always been agreed that law which applies only to an individual, or a number of individuals, selected out of the class to which they belong, is a special,

and not a general law. *Seate v. Irwin*, 5 Nev. 111. *Young v. Hall*, 9 Nev. 217. *Ex parte Spinne*, 10 Nev. 319. The accepted definition of a special law is that it is one which affects only individuals, and not a class; one which imposes special burdens or confers peculiar privilege upon one or more persons in no wise distinguished from others of the same category. *State v. California Mining Co.*, 15 Nev. 324."

See also: *Bruch v. Colombet*, 104 Cal. 347; 38 Pac. 45;
City of Topeka v. Gillette, 32 Kan. 431;
Ladd v. Holmes, 40 Oregon 167, 66 Pac. 714;
 91 Am. St. Rep. 457.

"Local or special laws are all those that rest on a false or deficient classification. Their vice is that they do not embrace all the class that they naturally embrace. They create preference and establish inequality. They apply to persons, things and places possessed of certain qualities or situations, and exclude from their effect other persons, things, or places which are not dissimilar in this respect. *Trenton Iron Co., v. Yard*, 42 N. J. L. (13 Vroom,) 357."

"A law is special or local, as contradistinguished from general, which embraces less than the entire class of persons or places to whose condition such legislation would be necessary or appropriate, having regard to the purpose for which the legislation was designed. A law which so particularizes, and by such means is restricted in its operation to persons or places which do not comprise all the objects which naturally belong to the class is special or local. *Attorney General v. Borough of Somers Point* 18 Atl. 694, 52 N. J. Law (23 Vroom) 32, 6 L. R. A. 57."

7 Words and Phrases 6578.

This law by its title and provisions clearly shows that it was intended to apply to certain individuals of a general class.

"If special legislation is prohibited, a classification such that one class has but one member and because the classification is based upon a past fact, can never have more, is void. *Campbell v. Indianapolis*, 155 Ind. 186, 57 N. E. 920."

Cooley Const. Lim. (7 Ed.) 184.

From these considerations it is very clear that this law is special, and, therefore, violative of the provisions of Section 26, Article V. of our state constitution. And if it is a special law, then every item named therein is a separate subject which would also bring it in violation of the provisions of the concluding part of Section 33, Article V., of the state constitution, as similar provisions of the constitutions of other states have been construed.

Wolf v. Taylor (Ala.) 13 So. 688;
Murray v. Colgan (Cal.) 29 Pac. 871;
Sullivan v. Gage (Cal.) 79 Pac. 537;
Ritchie v. People (Ill.) 46 Am. St. 315.

It is not the purpose of this office to hold any act of the legislature unconstitutional unless it is so clearly so as not to afford protection to the persons operating therein. But this law, we believe, to be violative of the provisions of the constitution above referred to, and we must, therefore, hold it void.

Very truly yours,

ALBERT J. GALEN,

Attorney General.