

**Forest Reserves, in Counties. Revenues of Forest Reserves, Distribution of. Distribution, of Forest Reserve Revenues.**

Chap. 118, Session Laws, Eleventh Legislative Assembly, is "An Act to provide for the distribution to and among the various counties entitled thereto of the money derived from Forest Reserves in the State of Montana under an Act of Congress approved June 30, 1906." The Act of 1906 being a part of the Federal Agricultural Appropriation Bill, and being for a specific purpose: Held, that moneys received by the state under similar later acts of congress, cannot lawfully be distributed under the third section of Chap. 118 of the Session Laws of the Eleventh Legislative Assembly, since that act undertakes to provide a rule for the distribution only of the moneys received by the state under the Act of Congress of 1906.

June 26, 1913.

Hon. Dan J. Heyfron,  
Missoula, Montana.

Dear Sir:

Under date of the 20th instant, you wrote to this office for an opinion upon a matter submitted to your office by Mr. J. H. Bonner, County Surveyor of Missoula County, which has to do with the distribution of moneys received by this state through the agricultural department of the federal government from the revenues of National Forests. Contention is made that moneys so received by our state have not heretofore been distributed to the counties entitled thereto in the manner provided for by Act of Congress.

Chapter 118, Session Laws of the Eleventh Legislative Assembly is "An Act to provide for the distribution to and among the various counties entitled thereto of the money derived from forest reserves in the State of Montana under an Act of Congress approved June the 30th,

1906." The first section of this Act undertakes to distribute \$61,951.46 among various counties of the State,—this money undoubtedly being that already received from the Federal Government under the provisions of the act named. The second section of the Act is to the effect that when the moneys are distributed by the State to the several counties entitled thereto, the county treasurers shall divide the same equally between and credit it to the general school fund and the general road fund. The third section of the Act is significant. It reads:

"Section 3. Hereafter, and until otherwise provided by law, the state auditor, as soon as practicable after money is received by the state treasurer, under and by virtue of the provisions of the act of congress referred to in Section 1 of this act, shall make division and distribution of such money among and to the various counties of the state in the proportion that the number of acres of land of each county included within, and forming a part, of forest reserves bears to the total number of acres of land included within and forming a part, of all forest reserves within the state of Montana, such number of acres to be ascertained and determined from the report of the district forester, which report shall be certified as correct by the state engineer. As soon as the several amounts due the various counties is ascertained, the state auditor shall draw his warrants for said several sums, payable to the treasurer of the county entitled thereto, and said county treasurer upon the receipt of said sum of money, shall make distribution thereof in the manner provided in Section 2 of this Act."

It may be inferred that the legislature intended this section to furnish a rule for the distribution of moneys to be received in the future by the state from the revenues of national forests; at least it has been generally so regarded, for under it the state auditor, upon the receipt by the state treasurer of such moneys, has drawn his warrants in favor of the several county treasurers of our state for amounts he found to be due the several counties affected, and the basis of such distribution has been "in the proportion that the number of acres of land of each county included within and forming a part, of various reserves bears to the total number of acres of land included within and forming a part of all forest reserves within the State of Montana." The question which now presents itself is: "Has this money been properly distributed?" It will be observed that the Act of 1909 provides for the distribution of money derived from forest reserves in the State of Montana under an act of Congress approved June the 30th, 1906. It does not undertake to provide for the distribution of money which may be received by virtue of any other federal act.

The Act of 1906, referred to is part of the Agricultural Appropriation bill, and is found in 34 Statutes at Large, p. 684.

Federal statutes, annotated, Sup. 1909, p. 663. It reads in part, as follows:

"That 10 per centum of all money received from each forest reserve during any fiscal year, including the year ending June

30th, 1906, shall be paid at the end thereof by the Secretary of the Treasury, to the state or territory in which said reserve is situated, to be expended as the state or territorial legislature may prescribe, for the benefit of the public schools and public roads of the county or counties in which the forest reserve is situated; provided that when any forest reserve is in more than one state or territory or county, the distributive share of each from the proceeds of said reserve shall be proportionately to its area therein."

This, however, is not the only Act of Congress that has to do with the subject under inquiry. The Act of May 23rd, 1908, 35 U. S. Statutes at Large, p. 260, is the act under which the present distribution is to be made. It provides:

"That hereafter 25 per centum of all money received from each forest reserve during any fiscal year, including the year ending June 30th, nineteen hundred and eight, shall be paid at the end thereof by the Secretary of the Treasury to the State or Territory in which said reserve is situated, to be expended as the state or territorial legislature may prescribe for the benefit of the public schools and public roads of the county or counties in which the forest reserve is situated: Provided, That when any forest reserve is in more than one state or territory or county the distributive share to each from the proceeds of said reserve shall be proportional to its area therein."

A comparison of this act with our act of 1909 shows that the method of distribution established by congress is at variance and wholly inconsistent therewith, for congress has provided that these moneys are

"to be expended as the state or territorial legislature may prescribe for the benefit of the public schools and public roads of the county or counties in which the forest reserve is situated: Provided, That when any forest reserve is in more than one state or territory or county the distributive share to each from the proceeds of said reserve shall be proportional to its area therein."

See also the Act of March 1st, 1911, (36 Statutes at Large, p. 963; Fed. Stats. Annotated, 1912 Supp. p. 393).

Our information is to the effect that in this state there are no less than eighteen national forest reserves, in twenty-seven counties. The Act of Congress contemplates that the revenue derived from each of these forest reserves is to be distributed to the county or counties in which the particular reserve is located, and not as our legislature would have it distributed by the act of 1909. It thus becomes apparent that some counties have benefited at the expense of others. The money, however, which has been distributed to and received by the several counties in which reserves are located has probably been expended for the public good; for the benefit of highways and of the public schools, and was undoubtedly distributed to them in the utmost good faith, though contrary to the express will of congress. I suggest,

therefore, that the remedy for aggrieved counties is by petition to the next session of our legislature for redress.

In my opinion the third section of the act of 1909 is wholly abortive, for the reason that while it undertakes to prescribe a rule for the distribution of forest reserve moneys received by this state, it provides only for the distribution of moneys received under and by virtue of the provisions of an Act of Congress approved June 30th, 1906. All moneys due the state by virtue of the provisions of that act have, undoubtedly, long since been paid and distributed. That act has been suspended, as indicated above, by the act of 1908, supra. This act of 1908 provides that moneys received by the state under the act are to be expended as the state legislature may prescribe for the benefit of the public schools and public roads of the county or counties, as the same may be. Since the act of 1909 was passed our legislature has taken no further steps looking toward the distribution of moneys received from the Agricultural Department of the Federal Government, and it is my opinion that all moneys paid into our state treasury pursuant to the Act of 1908, supra, or any other congressional act, must remain in the state treasury until our legislature, in its wisdom, sees fit to prescribe the manner and method whereby the counties entitled thereto may expend them for the use and benefit of their public schools and public roads, and that the state auditor is not now clothed with authority, nor is he authorized by any act to make distribution of the moneys so received.

It is undoubtedly true that the several counties of our state to which these forest reserve moneys should be distributed must suffer, but the only remedy at hand which suggests itself to me is to await the convening of the next session of our legislature, and then to petition it for relief.

Heretofore this office has been called upon to render an opinion upon the subject under enquiry, but the specific point under consideration was whether a county which has no forest reserve land within its boundaries would be entitled to any portion of the moneys paid by the United States from the income of forest reserves to this state, and decision was made to the effect that a county with no forest reserve area would not, under any consideration, be entitled to any portion of such moneys. This opinion was rendered on the 5th inst., pursuant to a request of your office. Reference to this opinion is made for the reason that the questions here under consideration were not made the subject of your former enquiry.

Yours very truly,

D. M. KELLY,  
Attorney General.

Since the original writing of this opinion, it has been revised, as shown above, pages 231, 232, 233, 234.