

State Board of Horticulture, Appropriation for. Appropriation, When May Be Used.

In emergency cases the state board of horticulture may, during the year 1913, use appropriation made for 1914, as a basis for expenditure until same is collected under the tax law, in accordance with Sec. 1943 of the Revised Codes.

July 2nd, 1913.

Hon. State Board of Examiners,
Helena, Montana.

Gentlemen:

I acknowledge receipt of inquiry submitted to your honorable body by the state board of horticulture relative to the right of said board at this time to take official cognizance of the amount designated in the general appropriation bill as expenses for said board for the year 1914. House Bill No. 420 (Chap. 136, Laws of 1913) relative to said board of horticulture contains these two items:

For 1913, "Expenses, \$13,500.00."

For 1914, "Expenses, \$13,500.00."

Chap. 106, Laws of 1913, makes the general tax levy for the state for the years 1913 and 1914, from which tax levy the money involved in these appropriations is raised.

Sec. 1943 of the Revised Codes, as amended and re-enacted by Chap. 121, Laws of 1911, referring to the state board of horticulture, provides, when "any money is expended by said board for the purpose of eradicating any disease or insect pest, * * *" notice shall be mailed to the owner, and if the amount so expended is not paid the same is certified to the county treasurer and collected as taxes against the property.

It is maintained by said board of horticulture that blight is now very prevalent in the orchard districts of Montana, and that the amount of money designated in the appropriation bill as expenses for 1913 is inadequate to deal with the situation; that in order to afford necessary protection it is imperative that additional funds be provided in some manner.

The provisions of said Sec. 1943 seem to presuppose that the board shall actually expend the money it has on hand, or which is necessary in eradication of disease or pests, and that the same is then collected by the county treasurer and returned to the board at the time taxes are collected in the fall.

The question submitted by the board is whether, after the expense amount named in the appropriation bill for 1913 is exhausted it may draw upon the appropriation item for 1914, reimbursing the same when the money is collected by taxation, as provided in said Sec. 1943.

For ordinary running expenses of the board it would perhaps be a violation of the spirit of the legislative direction to invade the appropriation named for 1914 during the year 1913, but the conditions here are beyond the ordinary, and from the report made by the state

board of horticulture, quick and immediate action is required, or very great and irreparable damage will result; in fact, the very existence of the horticultural interests of the state, so far as apples are concerned, is threatened. The legislature in making the division of the expenditures between the years 1913 and 1914 undoubtedly had in mind only ordinary expenses under ordinary and usual conditions, but here an unforeseen emergency exists which, if not promptly met, will result in the destruction of the industry for which the appropriation for 1914 was made and that too prior to the time when such appropriation becomes available, if it cannot be made available for any purpose until 1914, and if the industry is destroyed prior to that time the appropriation would be wholly unavailing for any purpose.

The appropriation is made for the protection of the industry when it needs protection, rather than to lie dormant until the industry is destroyed.

It is not the purpose to actually expend during the year 1913 the amount named in the appropriation for 1914, but only to use it as a basis of operation until the expense incurred may be collected as provided in said Sec. 1943.

A legislative appropriation may extend for two years.

Sec. 12, Art. XII, State Const.

The legislative direction is that \$13,500.00 are for expenses for 1913, and \$13,500.00 for expenses for 1914, but there is no declaration that a part of the amount named for 1913 cannot be used in 1914, nor that part of the amount named for 1914 cannot be used in 1913.

It has been repeatedly held that the unused portion of an appropriation made for the first of the two years may be used during the second year.

State ex rel. Bailey v. Cook, 14 Mont. 332.

State ex rel. Null v. Mayhew, 10 S. D. 365

State ex rel. Dales v. Moore, 36 Neb. 579.

State ex rel. v. Swigert, 107 Ill. 500.

Opinions Attorney General, 1905-06, 260.

In the Cook case, *Supra*, the supreme court says:

"The appropriation involved is for a specific purpose and is for two years. We think the appropriation in question, being for two years, is subject to any demands and liabilities that may be incurred by the state's agents during the whole period that it was intended by the legislature that it should continue."

It would seem that the appropriation of \$27,000.00 is, in law, one appropriation, rather than two separate and independent appropriations, for, if the appropriations were independent and separate, the unused portion of the first year could not be used during the second year. The constitution provides that no money shall be drawn from the treasury but in pursuance of specific appropriations made by law.

Sec. 10, Art. XII, State Const.

But in this case the appropriation is already made (House Bill 420, *Supra*) and the state levy is also made (Chap. 106, *Supra*), hence the provisions of Sec. 10, Art. XII, State Constitution, are not invaded

by calling into requisition at this time the item designated in the appropriation bill as expense for 1914 of \$13,500.00, but when these expenses are collected, as provided in said Sec. 1943, they shall be used in the payment of warrants and to reimburse the fund so drawn upon.

Respectfully submitted,

D. M. KELLY,
Attorney General.