

District Judges, Expenses of. Appropriation, Expenses of District Judge.

The expenses of district judge from January 1, 1913, incurred while upon official business within their districts, and outside of the counties where they reside, are proper charges against the appropriation made by the legislature March, 1913.

August 25th, 1913.

Hon. S. V. Stewart,
Governor of the State of Montana,
Helena, Montana.

Dear Sir:

I am in receipt of your communication of the 7th instant, enclosing a letter from Judge J. B. Poindexter of Dillon, Montana, raising the question as to whether the appropriation made by the last legislative assembly, House Bill No. 420, Sec. 1:

"That the following sums or so much thereof as may be necessary, be and the same are hereby appropriated out of any money in the state treasury for the objects and purposes hereinafter expressed, for the period commencing March 1st, 1913, and ending February 28th, 1914,"

Is available for the purpose of paying the expenses of district judges incurred while attending court business within their several districts and outside of the counties within which they reside, under the provisions of Chap. 91 of the Session Laws of the Twelfth Legislative Assembly?

The general rule is, of course, that appropriations can be used only to pay salaries earned or expenses incurred within the period for which the appropriation was made.

Opinion of the Judges, 5 Nebraska, 566.

In the present case, however, we are confronted with some circumstances which do not ordinarily occur when questions of this sort

arise. First, the legislature, by passing the appropriation bill for 1913 and 1914, caused all sums left over from their previous appropriation to lapse into the treasury, so that after March 1st there were no funds available from the previous appropriation to pay the expenses of district judges between January 1st and March 1st, 1913. The legislature must be presumed to have known the effect of the passage of the appropriation bill of March 1st, 1913, in this respect. Also, by the terms of Chap. 91 of the Laws of the Twelfth Legislative Assembly the legislature has provided a strict and definite method by which district judges are to proceed to get reimbursement for expense incurred when on official duty within their districts. They must observe this method or go without the reimbursement, for the expression of the one method and means carries with it the exclusion of some other method. The reason for specifying certain times and manner at and by which judges could present their claims for such expenses, are in all probability to expedite and make regular the examinations and allowance of such claims. And having imposed such restrictions upon the presentation of claims, it may be said that the claims do not mature until the date so named, and that an obligation to pay them does not come upon the state until the dates named, and until the claim is made out in accordance with the provision of said Chap. 91. Neither is any authority given to the judges making the claim or to the board of examiners upon the presentation thereof, to segregate the expense incurred previous to March 1st of any year, from that incurred after the 1st of March. In other words, the claim must be presented as a whole.

None of the numerous cases examined upon the subject of appropriations approaches the one in hand very closely as to facts. The one most nearly on all fours with the present case is that of

Irelan v. Colgan, 96 Cal. 413; 31 Pac. 294.

In that case an office of state engineer was created for two years, beginning May 18th, 1889, and a salary of three thousand per year was provided. The salary for the office was appropriated for the whole two years; that is, six thousand dollars was appropriated for the purpose of paying the salary of the state engineer, and the language of the appropriation act stated that the sums appropriated thereby were for the objects thereafter expressed, and for the support of the government of the state, for the 41st and 42nd fiscal years. The 41st fiscal year began July 1st, 1889, a month and a half after the creation of the office. The supreme court of that state in interpreting the act creating the office and the appropriation bill, used the following language:

"In determining whether an appropriation has been made for the payment of a particular claim, we do not look merely at the form of words used. The intention of the legislature is to be ascertained from the language of the act, and the provisions of other statutes relating to the same subject, and the nature of the claim for which the appropriation is made."

And the court held in an action of mandamus to the state con-

troller that it was the intent of the legislature to provide in its appropriation for the payment of that part of the salary which became due before the beginning of the 41st fiscal year. That is, that the words appropriating money for the support of the government for the 41st and 42nd fiscal years were not under the circumstances a limitation of the appropriation to salaries actually earned, and expenses incurred, within that period.

You are, therefore, advised that for the reasons above stated I am of the opinion that the expenses of district judges from January 1st, 1913, incurred while upon official business within their districts and outside of the counties wherein they reside, are proper charges against the appropriation made by the legislature March, 1913.

Yours very truly,

D. M. KELLY,
Attorney General.