

Appropriations, How Long Continued. Sanders Memorial Appropriation, Appropriation for. Lapse, of Appropriations.

No appropriation of public moneys can be made for a longer period than two years. At the expiration of two years the appropriation lapses and there is no longer any appropriation against which a warrant may be drawn.

May 15, 1914.

Hon. State Board of Examiners,

Helena, Montana.

Gentlemen: .

I am in receipt from you of claim filed on account of Sanders' Memorial, with inquiry as to whether the same may now legally be paid or as to whether there is now any appropriation existing for the payment thereof. The claim presented was filed on April 3rd, 1914.

By act of the Legislative Assembly, 1911:

"The state auditor of Montana is hereby authorized * * *
* to draw his warrants from time to time * * * not exceeding in the aggregate \$5,000 for the purpose of carrying out the provisions of this act."

The Act referred to is Chapter 79 Laws 1911, making an appropriation for the purpose of assisting and erecting a monument to perpetuate the memory of the late Wilbur F. Sanders, etc. By the provisions of the last clause of Section 12, Article XII of the state constitution, it is provided:

"No appropriation of public moneys shall be made for a longer period than two years."

If the two year period applies, this appropriation lapsed more than a year prior to the filing of this claim. The language of the constitution relating to the life of appropriations appears to be direct, specific and certain; under the provisions of Section I, Article XII of the constitution, it is the duty of the legislature to provide the necessary revenue for the support and maintenance of the state, and limitations are placed upon the tax levy which may be made. The life of each legislature is two years, hence, it is the duty of each legislature to provide for the support of the government for that period. There is no provision made by which one legislature shall provide a revenue to meet the appropriations made by some prior legis-

lature, but each legislature must make its own appropriations, then provide the revenue to meet the same. And under this constitutional limitation time is of the essence of every appropriation and when the two years have elapsed, the appropriation ceases to exist. Hence, there is no longer an appropriation until the convening of the next legislature. If a claim may be presented and paid one year after the expiration of the life of an appropriation, there would be no limit in point of time, although the money appropriated had lapsed into the treasury and been reappropriated by a subsequent legislature for other purposes, but the claimant could demand immediate pay because some former legislature years before had made an appropriation for the payment of that specific claim. In this law there is no attempt made to creat a specific fund in the nature of a trust fund—if that could be done and continued for more than two years, but the appropriation consists in direct authority given to the Auditor to draw his warrants, that is, it is a direct appropriation for a specific purpose, and lapses at the end of the second year after it was made. The fact that the claim is meritorious and should be paid, or that it was the intention, if such it was, that this appropriation should continue until all these claims were paid, cannot have any weight in construing this plain provision of the state constitution. It seems to be the plain meaning of that provision that all appropriations of public moneys cease at the end of two years, and that by no means whatsoever can an appropriation be made to exist for a longer period.

You are therefore, advised that the appropriation made to meet this bill has lapsed, and that the claim cannot now be paid out of the appropriation made by this Act of the 12th Legislative Assembly of the State of Montana.

The case of *State vs. Cook*, 14 Mont. 332 is not in point, as there was no attempt in that case to carry the appropriation beyond the two year period.

Yours very truly,

D. M. KELLY,

Attorney General.