

State Educational Institutions, Status of if Certain Laws Repealed. Status of State Educational Institutions if Certain Laws Repealed. Names, of State Educational Institutions.

Legal status of the different state educational institutions in case of repeal of Chapter 92, Session Laws of 1913, and the failure to enact other legislation, considered and determined.

February 25, 1915.

Hon. S. V. Stewart, Governor,
Helena, Montana.

Dear Sir:

We acknowledge receipt of your favor of the 22nd instant, submitting for the consideration of this department, the question:

What will be the legal status of the different state educational institutions, now included in the University of Montana, in the event of the repeal of Chapter 92, of the Session Laws of the Thirteenth Legislative Assembly, and the failure to enact other legislation relating thereto?

The provisions of the Statute relating to the educational institutions of the state covering a period of about twenty-five years, are somewhat fragmentary, and not always harmonious or consistent.

In Section 11 of Article XI of the State Constitution, it is provided:

"The general control and supervision of the State University and the various other state educational institutions, shall be vested in a State Board of Education, whose powers and duties shall be prescribed and regulated by law."

This section of the Constitution does not confer any authority or impose any duty upon the State Board of Education, except to denominate it as the moving power to carry into action legislative commands, respecting various state educational institutions. All powers of the Board must be prescribed and all duties imposed must come from written law in either general or specific terms.

Various educational institutions have been established, as the "UNIVERSITY OF MONTANA," at the city of Missoula,

Section 669, Revised Codes;

The Agricultural College of the State of Montana, at the city of Bozeman,

Section 732, Revised Codes;

The "MONTANA STATE SCHOOL OF MINES," located at Butte,

Section 691, Revised Codes; and

The MONTANA STATE NORMAL COLLEGE," at the city of Dillon,

Section 772, Revised Codes.

In certain supplemental and isolated pieces of legislation, and in advertisements and letter-heads, these institutions are referred to by various and varying names, but the above are the names and designation given them by positive statutory law, and are, for that reason, the only names on which we may rely in dealing with them.

In obedience to the spirit and intent of the State Constitution, and of the Enabling Act, the Legislature has not only established these institutions, but has prescribed and regulated the powers and duties of the State Board of Education with respect thereto. Many of the provisions of the Statute relating to the powers and duties of the Board were collected and incorporated in Chapter 73 of the Session Laws of 1909, and the Sections of the Code named therein were repealed.

On March 12, 1913, Chapter 76 of the Thirteenth Legislative Assembly was approved and took effect as a law on that day. This Act specifically repealed said Chapter 73 of the Laws of 1909, and all other Session Laws and Sections of the Codes, relating to the powers and duties of the State Board of education, and by its own provisions, prescribed all the powers and duties then thought necessary to be exercised by the Board. In this Act of 1913 (Ch. 76), the names of the institutions were preserved, and the State Board was given authority, among other things, to grant diplomas, confer degrees, etc. Under all laws prior to the enactment of Chapter 92, 1913, the Board dealt with each of the institutions as an entity, separate and distinct from every other institution.

On March 14th, 1913, Chapter 92, of the Session Laws of the Thirteenth Legislative Assembly, was approved and took effect as a law on that day. This latter Act provides that all these various state educational institutions herein named, shall be amalgamated as one entity, known as "UNIVERSITY OF MONTANA," and all conflicting laws are repealed. Hence all laws relating to the separate names of these institutions are repealed, and they no longer have any names or designations, except the "UNIVERSITY OF MONTANA," and for specific reference the name of the department is added. Nor has the State Board any power or authority to act in any other name, either in the granting of diplomas, adopting rules, prescribing standards of promotion or otherwise. In Section 7 of said Chapter 92, reference is made to Chapter 73 of the Session Laws of 1909, in such a manner as to justify the conclusion that it was the intent to extend the provisions of that Chapter, but said Chapter 73 was repealed prior to the enactment of said Chapter 92, and hence did not exist at that time. A law cannot be extended by reference to its title.

"No law shall be revised or amended, or the provisions thereof extended by reference to its title only, but so much

thereof as is revised, amended or extended shall be re-enacted and published at length."

Section 25, Article V, State Constitution.

The only power and authority the State Board now has, with reference to the matters dealt with in said Chapter 92, Laws of 1913, are contained in the provisions of that Act—all inconsistent Acts having been repealed,—and the repeal of that Chapter would not have the effect of reviving former Acts by it repealed.

The laws permitting these institutions to continue as separate and distinct entities are repealed. The laws authorizing the State Board to grant diplomas to graduates of these separate entities are repealed, and the repealing Act (Chapter 92, Session Laws 1913) provides that such diplomas shall be issued in the name "UNIVERSITY OF MONTANA." If now this repealing Act is itself repealed, without a saving clause of some kind, and we apply to the law, the same rules of construction that are applied to other laws, there will not exist any statutory authority for the issuance of diplomas in any name whatsoever. If this right continued at all, it would be by virtue of the law of necessity, not by virtue of any statutory provision.

The effect of the repeal of said Chapter 92, Laws 1913, without other legislative enactment would be to leave the State Board of Education without any statutory authority or direction whatsoever, as to all the things dealt with in said Chapter 92 as matters of substantive law, for all laws inconsistent with those provisions would be repealed, and would not be revived by the repeal of this Chapter. Not all of the powers and authority granted to the State Board of Education would be abrogated by the repeal of this Chapter, but the Board has no authority to give a legal name to any state institution, except to give it a designation for its own convenience, and a diploma granted by the Board, without authority of law, could have no greater weight than an item of evidence that the person to whom it was issued had pursued a certain course of study for a certain time.

The repeal of said Chapter 92 would not dissolve any of these institutions for the law of their creation is not any part of that chapter, but their legal designation, so far as the name is concerned, would be gone. Just what, if any effect, this would have on grants of money annually made by the general government to the Agricultural College of the State of Montana cannot now be conjectured. Neither the law of necessity nor the law of inference, with reference to the state institutions is necessarily controlling on the general government; nor is it necessarily advisory thereto; nor is it controlling in the construction by a state court of any question arising with reference to any grant, devise or bequest made to any of these institutions designated therein by their former name.

Yours very truly,
W. H. POORMAN,
Assistant Attorney General.