

Constitutional Law, Statutory Construction. State Arid Land Grant Warrants, Payment of. Carey Land Act.

House Bill No. 6, Fourteenth Legislative Assembly, et seq. with reference to payment of State Arid Land Grant Warrants.

March 12, 1915.

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

Dear Sir:

I acknowledge receipt of your inquiry relating to House Bill No. 6, passed by the Fourteenth Legislative Assembly. This bill appropriates One Thousand Dollars, or so much thereof, as may be necessary

“to pay the warrant issued by the State Arid Land Grant Commission for expenses incurred by it against Districts One, Two and Four, and open accounts which are credited on the ledger of said Commission to George Sheetz for salaries and supplies furnished, the aggregate of said warrants and accounts being, without computing interest, \$385.00. The warrant and accounts for the payment of which this appropriation is made being the same warrants and accounts contemplated by subdivision 4, Section 2279 of the Revised Codes of the State of Montana.”

The report of the Assistant Secretary of the Carey Land Act Board, the successor to the State Arid Land Grant Commission, reports that there were four warrants issued to George Sheetz, numbered respectively twelve, thirteen, fourteen and fifteen for \$300, each, and one warrant, numbered sixteen, for \$340.90, and that there are no open accounts. There is not any warrant or indebtedness of the amount named in the Bill, and it is not identified in any other way than by the amount. Hence, it is not possible from the Bill to identify the in-

debtedness for which the appropriation is made, for there is no such indebtedness of record.

The basis of these claims is the act of March 18, 1895 (Sec. 3530, et seq., Political Code of 1895), which by its terms was enacted for the purpose of enabling the State to accept the offer of the United States, as contained in the Act of Congress, 1894, relating to the reclamation of certain arid lands, and by the terms of the Act, the expenses of such reclamation were made and charged against the lands reclaimed. Authority was conferred upon the State Arid Land Grant Commission, created by the Act, to enter into contracts for the reclamation of the land, and it was specially provided in the Act:

"Provided, however, that no liability or indebtedness is created against the State by, under or through said contract."

Hence, all the "previous authority of law" for the payment of these bills, is this Act of 1895, which specifically provides that the State shall not be liable for such indebtedness. Section 29, Article V, State Constitution. It is provided in Section 3 of said House Bill No. 6 that the moneys received under the provisions of Subdivision 4 of Section 2279, Revised Codes:

"Shall be paid by the Carey Land Act Board to the State Treasurer to be considered as a repayment to the general fund of the sums hereby authorized to be paid to the Carey Land Act Board."

It would appear from this provision that the state was merely advancing the money to pay one of the various claims now outstanding against the State Arid Land Grant Commission, and that the moneys hereafter received through the ordinary channels for the payment of all these claims, should be utilized, not in the payment of the claims in their regular order, but should be returned to the State Treasurer in repayment of moneys advanced for the payment of the specific claim or warrant named in the Bill. The effect of this would be a giving to this particular claim a preference right over other claims and warrants, not only in paying it out of its regular order, but in utilizing all of the funds received for the payment of this claim, but in effect making of it a preferred claim over the other warrants now outstanding. That is, under the provisions of this Bill, these warrants would not be paid in the order in which they were registered, but that this particular warrant should be paid in full, irrespective of whether prior warrants issued under the same authority are ever paid. Whether or not this would be a violation of the provisions of either Section 29, Article V, or of the provisions of Section 1, Article XIII of the State Constitution, it is unnecessary to determine, for the indebtedness described in the Bill cannot be identified, and the Bill certainly does go to the extent of fastening a liability upon the State, when by the law under which the liability was incurred, it was specifically stated:

"that no liability or indebtedness is created against the State."

Yours very truly,

D. M. KELLY,

Attorney General.