

**University of Montana—Buildings, Contracts For.**

Plans for the construction of buildings by private capital for the University of Montana.

Sept. 26th, 1919.

Chancellor Edw. C. Elliott,  
Helena, Montana.

Dear Sir:

I am in receipt of your letter of the 9th inst., in which, in accordance with the instructions of the State Board of Education, you submit for my opinion a proposal, substantially as follows:

“A private corporation, or trustee representing a group of individuals contributing the building funds, will assume responsibility for the construction and will construct two residence halls at the University at Missoula, each at a cost of \$125,000.00, on land approved by the State Board of Education, not now under the control of the University, but lying within the area of the University campus as projected by the Gilbert-Carsley plans for the future constructional development of the institution. When ready for occupancy the state would lease the buildings at a fixed rental, furnish them for student use, and assume responsibility for their proper operation and upkeep, the amount of the annual rental

depending upon the general plan accepted for the future, several plans having been considered, as follows:

1. An annual rental sum which would yield a net return of six per cent on the original investment;
2. An annual rental sum which would yield a net return of six per cent on the original investment, and also permit the amortization of the investment at the end of a certain period of years, when the title to the buildings would pass to the state;
3. An annual rental sum which would yield a net return of ten per cent until such time as the buildings might be purchased by the state, when all rental payments over and above the six per cent on the original investment would be applied on the purchase price."

You desire my opinion as to whether or not it is possible for the State Board of Examiners to authorize the State University to enter into an appropriate agreement for the erection of such residence halls and the rental thereof under one of the plans above outlined.

It must be remembered that neither the State Board of Education, nor the State Board of Examiners, nor any officer or other board has any power or authority to contract any debt on the part of the state, to enter into any contract for the state, or to bind the state in any manner unless authority be first granted so to do by the legislature.

Under plan 2 the agreement would bind the state to pay such an amount annually as would, at the expiration of a certain period, amount to payment of the amount invested with a net return thereon of six per cent during such period, while under plan 3 the agreement would bind the state to pay a certain amount annually, a portion of which would be a return on the amount invested, and the balance of which would apply on the purchase price of the property when purchased by the state. Under either plan the agreement would virtually constitute an agreement to purchase by the state, the only difference between the two being in the manner in which the purchase price would be paid. As the legislature has not granted authority to the State Board of Education, or to the State Board of Examiners, or to any other board or officer to enter into such an agreement or contract, any such agreement or contract would be *ultra vires*, the terms thereof could not be enforced against the state and the State Board of Examiners would have no authority to authorize payments thereunder. Therefore, until such time as the legislature may grant authority to some board or officer to enter into such an agreement or contract, these two plans cannot be considered.

With reference to plan 1, whereby the agreement would simply bind the state to pay an annual rental sufficient to yield a net return of 6% on the amount invested, the situation is somewhat different. Under Section 648, Revised Codes, as amended by Section 106 of Chapter 76, Session Laws 1913, and under Chapter 92, Session Laws 1913, unquestionably the State Board of Education, with the approval of the State Board of Examiners, may, whenever it is deemed necessary to do so, rent buildings for the use of the University, and such rental and the cost of furnishing such buildings may properly be paid out of the general appropriation for maintenance and betterments, but even in such a case the agreement could not bind the state to rent the property for a definite

period extending over a long term of years. In other words, the state could not enter into an agreement which would have the effect of guaranteeing the rental of the buildings for any definite or certain length of time in the future, as the rental of such buildings must be considered merely for the purpose of supplying the needs and requirements of the University until such time as the state may be able to supply such needs and requirements by the construction or purchase of necessary buildings. I believe, however, that such an agreement might properly provide that so long as the need for such buildings exists and until such time as the state supplies such need by the construction or purchase of the necessary buildings, the state will rent such buildings at the agreed rental. If, under such an agreement, the buildings should be constructed the next legislature may authorize the purchase of such buildings outright, or may authorize the State Board of Examiners to enter into an agreement embodying either plans 2 or 3, or may authorize the rental thereof for a definite number of years in the future; in fact, the legislature may take any action with reference thereto which it deems proper.

Respectfully,

S. C. FORD,

Attorney General.