

Appropriations—Reversion—Deficiency Claims—State Institutions—State Auditor.

The unexpended balance of an appropriation reverts back to the state treasury upon the end of the two year period for which the appropriation was made but all claims arising during this period should be paid and it is discretionary on the part of the state auditor as to when he shall close his appropriation accounts.

George P. Porter, Esq.,
State Auditor,
Helena, Montana.

July 13, 1925.

My dear Mr. Porter:

You have requested my opinion on the following questions:

“First. Under the provisions of house bill No. 10, laws of Montana, extraordinary session of the 18th legislative assembly, 1924, being an act appropriating money for the operation and maintenance of certain of the state institutions of the state of Montana for the periods beginning June 30th, 1923, and ending June 30th, 1925, what date does the unexpended balance of the appropriations revert back to the state treasury and what length of time is the state auditor required to keep his appropriation accounts open before closing books for the appropriation period ending June 30th, 1925?

“Second. What date do bills or claims incurred against the appropriation accounts prior to June 30th, 1925, and not transmitted by the state board of examiners to this office before June 30th, 1925, become deficiency claims?”

In answer to your first question, article XII, section 12 of our state constitution provides in part as follows:

“No appropriation of public money shall be made for a longer term than two years.”

And section 304, R. C. M. 1921, further provides:

“All moneys now or hereafter appropriated for any specific purpose shall, after the expiration of the time for which so appropriated, be covered back into the several funds from which originally appropriated; provided, however, that any unexpended balance in any specific appropriation may be used for either of said years for which such appropriation has been made.”

Thus, the unexpended balance of appropriations provided for under the above provision will revert back to the state treasurer at 12:00 o'clock midnight on the 30th day of June, 1925.

This does not mean, however, that the state auditor is required to close his appropriation accounts on that date as all claims arising during

the period for which the appropriation is made should be paid. The general law covering this question has been well stated in 36 Cyc. 894, as follows:

"In several states the constitutions provide that no appropriations shall continue in force longer than for a designated period. (Two years in Montana.) Even under such a provision, however, unless expressly so provided, it is not necessary that the money appropriated should be actually drawn from the treasury during the time limited, although the expense must be incurred or the claim arise during such period."

In the case of *State ex rel Ledwith vs. Bryan*, 120 N. W. 916, the supreme court of Missouri said:

"The object of the constitutional provision requiring biennial appropriations for the support of the government is to render all departments of the state government dependent upon the will of the people as expressed by its representatives, and to require a return to the source of power every two years for the necessary means of existence."

And the court in this case also said:

"It is not essential that the money be actually drawn during the two year period, but the expense must have been incurred during the two years for which the appropriation was made. It is the unexpended surplus of the amount appropriated that lapses, not the uncollected portion of an appropriation."

It is, therefore, my opinion that all expense incurred or all claims arising during the period beginning July 1st, 1923, and ending June 30th, 1925, should be paid out of said appropriation. It is obvious that all such claims cannot be presented for payment before the closing of the fiscal year, and, therefore, the state auditor is entitled to take into consideration the fact that legitimate claims against the appropriation will be presented after the 30th day of June, 1925, and it is discretionary with him as to when he shall close his appropriation accounts, but in exercising that discretion, he should take into consideration the methods of doing business and hold his accounts open long enough to take care of all claims presented with due diligence and in the regular course of business.

In answer to your last question, claims will not become deficiency claims as long as the appropriation for their payment has not been exhausted or reverted.

Very truly yours,

L. A. FOOT,
Attorney General.