

Appropriations — Funds — State Highway Commission — Transfers.

House Bill No. 460, session laws of 1925, does not provide for a transfer from one item to another when there is a deficit in one and a surplus in another.

H. W. Holmes, Esq., January 20, 1926.
Chief Engineer, State Highway Commission,
Helena, Montana.

My dear Mr. Holmes:

You have submitted to this office the question whether a transfer of any part of the funds appropriated for administration expenses of the state highway commission by house bill No. 460 (session laws of 1925) can be made to aid the appropriation made in the same bill for surveys, plans and other field engineering expense incurred prior to letting of contracts.

House bill No. 460 appropriated for each of the fiscal years beginning July 1, 1925, and ending June 30, 1927, \$50,000 for administration expenses and \$20,000 for field engineering expense incurred prior to the letting of contracts, making a total of \$70,000 for these two items for each year.

The reason for your request is, that while you have a total appropriation of \$70,000 for administration and field work, you actually have a surplus of \$12,000 or \$15,000 in the administrative fund, and have, or will have, exhausted the item for surveys, plans and field engineering work.

House bill No. 448 (session laws of 1925) which makes appropriations for a majority of the state officers, boards and commissions, contains a section permitting the board of examiners, when requested by the administrative head of a board or department, to transfer amounts or parts of amounts appropriated for a specific purpose to items appropriated for another purpose, provided the transfer does not affect the total aggregate appropriation made to any department.

House bill No. 460, which appropriates money for your department, is not affected by the section above referred to, which applies only to the departments provided for by house bill No. 448, nor is there any general provision of law permitting such a transfer to be made.

The presumption is that when the legislature makes provision for a transfer of one item to another in the case of certain departments and does not do so as to other departments it intends that no transfer should be made in the latter case.

The whole matter of appropriations is purely a legislative question and its right to make such distinctions cannot be questioned.

This office has held under authority of State vs. Cook, 14 Mont. 333, that when a specific appropriation is made for a specific purpose for the two ensuing fiscal years and the amount for the first year becomes ex-

hausted items or expenses chargeable thereto for the remainder of that year may be paid by warrants drawn against the appropriation for the succeeding year, when it becomes available.

It has likewise been held that a balance from the first year's appropriation may be carried over to aid in any deficiency in the second year.

See :

Vol. 1, opinions of attorney general, pages 260 and 277 ;

Vol. 3, opinions of attorney general, page 298 ;

Vol. 4, opinions of attorney general, page 181 ;

Vol. 5, opinions of attorney general, page 241.

It is possible that the next legislature, which meets in January, 1927, will authorize a transfer to be made from the unexpended administrative item to the field work item should your second year appropriation become exhausted by the end of the present calendar year. Otherwise, your field operations must be suspended for the remainder of the fiscal year of 1927.

It is, therefore, my opinion that no transfer can be made from the unexpended administrative expense account to the field engineering expense account.

Very truly yours,

L. A. FOOT,
Attorney General.