

**Appropriations — Department of Agriculture — Expenditures.**

Under house bill 164, laws of 1927, making appropriations for the support of the department of agriculture, the commissioner of agriculture may expend less than the sum of \$9,000 out of the fees and earnings of the department for the support of the division of labor and publicity and may use the balance of such unexpended fees for the support of the other divisions of said department.

February 27, 1928.

A. H. Bowman, Esq.,  
Commissioner of Agriculture,  
Helena, Montana.

My dear Mr. Bowman:

House bill 164 (the appropriation bill passed by the last session of the legislature for the support of the department of agriculture) contains the following provision:

“There is also hereby appropriated for the use of the Division of Labor and Publicity, Nine Thousand Dollars . . . \$9,000.00 out of the earnings and fees of the said department of agriculture, labor and industry and for the use of all other divisions of said department, all remaining fees and earnings of the earnings of the department of agriculture, labor and industry, not otherwise appropriated.”

You have requested my opinion whether it would be legal for you to expend less than the sum of \$9,000.00 out of the fees of your department for the support of the division of labor and publicity and use the remainder of said fees for the support of the other divisions of your department such as the grain division, the dairy division, the horticulture division, etc.

Section 1 of house bill 164 reads as follows:

“That the following sums or so much thereof as may be necessary be, and the same are hereby appropriated out of any money in the State Treasury of the State of Montana, not otherwise appropriated, for the objects and purposes in the manner hereinafter stated.”

It is apparent that the specific appropriation of \$9,000.00 for the use of the division of labor and publicity is governed by the modifying words “or so much thereof as may be necessary” contained in section 1 as above quoted.

As the head of the department of agriculture there can be no question about your authority to determine how much of said appropriation of \$9,000.00 is necessary for the use of the division of labor and publicity. Should you determine that a less sum than \$9,000.00, for example

\$7,000.00, is needed for the use of that division, you can unquestionably limit such expenditure of said amount.

The question then presents itself as to what disposal you are authorized to make of the extra amount (in the case I have assumed)—the sum of \$2,000.00.

It is my opinion that the disposal of said \$2,000.00 would be governed by the language above quoted "for the use of all other divisions of said department, all remaining fees and earnings." It was evidently the intention of the legislature to authorize a maximum expenditure for the support of the division of labor and publicity of \$9,000.00 out of the fees of your department and to authorize the use of all remaining fees and earnings for the support of the other divisions of your department.

Discretion must necessarily be vested in the head of a department, within the maximum limits fixed by the legislature, to determine the amount that shall be expended for the support of the several divisions of his department.

Very truly yours,

L. A. FOOT,  
Attorney General.