

Normal Schools—Funds—Schools.

Funds received from normal school lands are divisible between the several normal schools in the discretion of the legislature.

Pearl I. Smith Esq.,
Member of State Senate,
Helena, Montana.

February 27, 1929.

My dear Senator Smith:

You have requested an opinion on the following matter:

“Heretofore the State Normal School at Dillon has been receiving all of the funds from the income of the state lands given to the state under the enabling act for the use of normal schools. It seems that this has been done under a statute passed accepting the land under the enabling act for the State of Montana.

This year the budget asking for appropriations for both the Dillon and the Billings Normal schools asks that this fund,

amounting to \$35,000, be divided half and half, to each school. Under the act accepting the lands under the old enabling act it apparently is stated that the income from these lands shall be used for the State Normal School at Dillon.

"May this fund be legally divided at this time between the two normal schools?"

It is provided by Section 17 of the enabling act:

" * * * the following grants of land are hereby made, to-wit: * * * for state normal schools one hundred thousand acres * * * ."

This grant of land was accepted in Ordinance No. 1 of the Constitutional convention.

"The State accepted public lands only upon the terms of the Enabling Act." (State ex rel. Galen vs. District Court, 42 Mont. 105, 112 Pac. 706).

Section 926 R.C.M. 1921 establishes "a state normal school to be called 'Montana State Normal College'."

It is provided by Chapter 160, Laws of 1925:

"There is hereby established * * * a state normal school * * * to be known as 'Eastern Montana State Normal School'."

In State vs. Rice, 33 Mont. 389 the Supreme Court uses the following language:

"So far as the other question is concerned, it need only be noticed in passing. The United States granted 100,000 acres of land to Montana 'for State Normal Schools'. The Congress was only concerned in seeing that this grant was applied to the purpose for which made. It was apparent that, in order to be available, the lands must be utilized, and the Congress therefore left it to the legislature of this state to designate the manner in which such lands should be held, appropriated, or disposed of; but it went no further than this. It did not attempt to say when the Normal School should be instituted, how many Normal Schools should be established, or how the funds derived from the sale or leasing of these lands should be controlled or made to work out most effectually the end sought by the grant."

We are unable to find any constitutional provision limiting the use of funds obtained from the above mentioned grant to the state normal School at Dillon, and in the absence of any constitutional provision and in the absence of any such provision in the enabling act you are advised that there is no limitation as to any particular normal school for which funds received from normal school lands must be appropriated, and that the matter of the division of such funds between normal schools is entirely in the discretion of the legislature.

We have considered code Section 929 providing that the state board of education herein mentioned and its successors shall receive in the name of the state normal school hereby established all benefits, etc.

under Section 16 of the enabling act. However, in view of the language of *State vs. Rice* and in view of the fact that the state normal school land had been accepted in Ordinance No. 1 of the Constitution four years previous to the founding of the normal school at Dillon, we are constrained to the opinion that the statute in question did no more than provide a means by which trust funds held by the state for normal schools could be put to their intended use. This was done by an act of the legislature which, in the absence of constitutional restraint, above noted, is not in any manner confined or restrained by its own act.

Very truly yours,

L. A. FOOT,

Attorney General.

By T. H. MacDonald, Assistant.