

Opinion No. 31**Appropriations—University of
Montana—Schools.**

HELD: It is doubtful if the legislature has the power to divert any part of the millage tax for the support of an institution which is not a component part of the University of Montana.

January 21, 1933.

Chancellor Brannon has requested us to advise as to the propriety of appropriating money from the millage tax fund for the support of the institution known as the "Branch Regional Summer School at Miles City."

The Legislative Assembly has not established this school or made it a unit of the University of Montana by any legislative enactment. So far as we know it is not connected in any way with the Agricultural Experiment Station or the Agricultural Extension Service. It is true, however, that the legislature at the sessions of 1929 and 1931 recognized it to the extent of making small appropriations for its support.

In 1929 the Legislative Assembly passed Referendum Measure No. 34 which authorizes that body to make an additional levy of not to exceed three mills for a period of ten years, beginning with the year 1931, on real and personal property, for the support, maintenance and improvement of the institutions now comprised in the Greater University of Montana, together with the Agricultural Experiment Station and the Agricultural Extension Service, and to appropriate so much of the moneys derived therefrom for each year during said period as may be necessary for said purposes. This measure was adopted by the people at the general election held on November 4, 1930.

A similar measure was initiated in 1920 and adopted by the people at the general election held in November of that year. It, in effect, empowered the

Legislative Assembly to make an increased levy of one and one-half mills, over a period of ten years, beginning with the year 1921, for state purposes, and to appropriate the money derived therefrom for the support, maintenance and improvement of the then four units of the University of Montana. The assembly, in making appropriations for the fiscal year beginning July 1, 1925, and ending June 30, 1926, followed the direction of the people contained in the measure. In December, 1925, the state board of examiners ordered the state auditor to draw warrants on the fund so created in payment of claims against the Agricultural Experiment Station and the Agricultural Extension Service. In *State ex rel. Jones v. Erickson*, 75 Mont. 429, the court held that the board was without authority so to do for the reason that the agricultural experiment station and the agricultural extension service were not parts of the agricultural college or component parts of the University of Montana. The court, though referring to the matter, did not decide that the direction above mentioned was or was not binding on the successive legislative assemblies. We cite the case, however, not because it is binding on the legislature, but because it may serve as a guide to legislative action.

Generally speaking, statutes enacted under the initiative or referendum, like other statutes, are subject to amendment or repeal by the legislature. (*State ex rel Goodman v. Stewart*, 57 Mont. 144; 59 C. J. 719, 720).

Even so, it is doubtful that the legislature has power to divert any part of the fund to purposes other than those specified. If it has the power to divert a part, it may be argued with force that it has power to divert the whole of the fund.

In conclusion, we feel the legislature is morally, if not legally, obligated to respect the wishes of the people as expressed at the polls, and so advise.