

authorize some state officer or board to enter into a contract with the United States in behalf of State of Montana with view of obtaining loan under terms of National Industrial Recovery Act for construction of public works, but in the absence of such legislation, no state officer, board or commission may obligate or engage the state by acting as trustee for federal government.

August 26, 1933.

In order that our position may be better understood we quote your letter to us, of the 19th inst. in full, as follows:

"In discussion of the problem of including a water conservation program in the Public Works program, certain questions have arisen.

"It is suggested that the State of Montana, thru some office or department, act as trustee for the Federal Government in constructing and operating stream control works, collecting all revenues from these works and remitting all such revenues above the cost of operation and maintenance to the Federal Government to apply on repayment of construction cost.

"Setting it up in a different way, that the State borrow funds for construction of these works, obligating itself to repayment of the principal sum only to the extent of net revenues derived from such works, pooling such net revenues from all projects until the whole sum borrowed may be repaid. The Federal Government would be secured by title to or first mortgage on all constructed works.

"Can any state authority represent the state in entering into a contract with the United States for construction and operation of stream control and water conservation works under the 'Public Works' provision of the National Recovery Act?

"If no present authority can do this, could legislative action authorize the Mississippi Valley Water Conservation Commissioner or other state board or office to enter into such contract?"

Opinion No. 323

**Legislative Assembly—Public Works
—National Industrial Recovery
Act—Officers.**

HELD: Provided that it conforms to Sec. 35 of Art. V and Sec. 2 of Art. XIII of the Constitution, the legislature may

Section 202 of the National Industrial Recovery Act provides that the Federal Emergency Administrator of Public

Works, under the direction of the President, shall prepare a comprehensive programme of public works, which shall include, among other things, the conservation and development of natural resources, including control, utilization, and purification of waters, prevention of soil or coastal erosion, development of water power, transmission of electrical energy and construction of river and harbor improvements and flood control.

Section 203 of the same act authorizes the President, through the Administrator or such other agencies as he may designate or create, to construct, finance, or aid in the construction or financing of any public works project included in the programme prepared pursuant to section 202, and upon such terms as he shall prescribe, to make grants to States, municipalities, or other public bodies for the construction, repair, or improvement of any such project, but no such grant shall be in excess of 30 per centum of the cost of the labor and materials employed upon such project.

The state functions through its officers. Highly desirable as it may be to obtain the benefit of the federal statute, there is no law which will permit these officers to obligate or engage the state in the manner outlined in your letter. Except as the constitution may otherwise provide, state functions are to be performed by state officers. Generally speaking, state officers, boards, commissions, and departments have such powers as may have been delegated to them by express constitutional and statutory provisions, or as may properly be implied from the nature of the particular duties imposed upon them. But executive and administrative officers, boards, departments, and commissions have no powers beyond those granted by express provision or necessary implication. (59 C. J. 111.)

Under our system of government, all power to appropriate money for public purposes or to incur any indebtedness therefor, unless given by the Constitution to some other body politic, or individual, rests in the legislature. The executive branch has no such right, in the absence of either constitutional or statutory provisions authorizing it, and, when such powers are given, either by the Constitution or by act of

the Legislature, they are confined to the particular case so authorized, while the power of the Legislature on such a subject, in the absence of constitutional prohibition, is plenary. (*Le Febvre v. Callaghan*, 263 Pac. 589.)

Public officers have and can exercise only such powers as are conferred on them by law, and a state is not bound by contracts made in its behalf by its officers or agents without previous authority conferred by statute or the constitution. (59 C. J. 172; *Lingo-Leeper Lumber Co. v. Carter*, 17 Pac. (2d) 365.)

The legislature may authorize some state officer or board or commission to enter into a contract with the United States in behalf of the State of Montana with the view of obtaining a loan under the terms of the National Industrial Recovery Act for the construction of works of the kind indicated, but the law must not be so worded as to bring it into conflict with section 35 of Article V or section 2 of Article XIII of the constitution.