

Opinion No. 367

**Oil and Gas — Royalties — Common
School Equalization Fund—High
way Fund**

HELD: Under the provisions of
Section 1, Chapter 119, Laws of 1927,

the moneys received from the Federal Government for oil and gas royalties and rentals should be distributed equally between the common school equalization fund and the state highway fund.

October 18, 1933.

You ask for a construction of Section 1, Chapter 119 of the Laws of 1927, and inquire: "Under the provisions of that section how much of the amount received from Federal oil royalties should be credited to the Common School Equalization Fund?"

Chapter 85 of the act of February 25, 1920, of the United States provided for the payment of certain bonuses, royalties and rentals from oil and other sources to be turned over to the several states where same were produced, which statute in part provides: "Said moneys to be used by such state, or subdivisions thereof, for the construction and maintenance of public roads or for the support of public schools or other public educational institutions as the legislature of the state may direct." 41 Stat. 450, Section 35, 30 U. S. C. A., Section 191. It is to be noted that by the terms of the Federal statute these funds may be used by the state for highway or educational purposes as the legislature may direct.

Chapter 104 of the Laws of 1923, amending section 1211, Revised Codes, provides insofar as material as follows: "All sums of money derived from any and all bonuses, royalties, and rentals paid into the treasury of the United States on account of any permits or leases granted by the government of the United States as provided by the Act of Congress of February 25, 1920, and paid by the Secretary of the Treasury of the United States to the State of Montana, shall within thirty days after being received by the State of Montana, be apportioned and distributed by the state treasurer as follows: One-half thereof shall be deposited to the credit of the state highway fund, and the other one-half thereof shall be apportioned between and distributed and paid over to the several counties of the state."

In the year 1927 a law was passed

creating the State Common School Equalization fund, same being Chapter 119 of the Laws of 1927. This law provided in part: "* * * all moneys acquired from the sources referred to in Sections 1211 and 1212 Revised Codes of Montana of 1921 as amended by Chapter 104 Session Laws of the Eighteenth Legislative Assembly, being moneys received by the State of Montana from the Treasurer of the United States under the provisions of the act of Congress of February 25, 1920; being Federal Oil and Gas Royalties," (and certain other funds) "be and the same hereby are transferred to a fund to be known as the State Common School Equalization Fund, and the State Auditor and the State Treasurer are hereby directed to set up such Fund on their respective books and transfer thereto all moneys now in, or hereafter received for the credit of the several funds above enumerated."

In determining the question of the disposition of the money which comes to the state from Federal oil and gas royalties for highway or school purposes, it is to be noted that the first statute quoted divides this money equally between the Highway Department and the common schools. The second statute (Chapter 119 of the Laws of 1927) was the law enacted primarily for the purpose of creating a State Common School Equalization Fund and is so stated in its title.

In considering this question we must determine whether or not the subsequent statute repeals the prior statute by implication. Repeals by implication are not favored. (State ex rel. Metcalf v. Wileman, 49 Mont. 436.) They are only to be considered repealed beyond the point where they cannot be reconciled. On first reading it appears that the 1927 law requires all the funds herein discussed to go to the State Common School Equalization Fund. A more careful reading shows that there are a number of reasons which indicate that was not intended to be the case. The limited title of the 1927 law shows no intent to repeal the prior law in this respect. While the 1927 law refers to all moneys acquired it does not state by whom such moneys shall have been

acquired. It may refer to all moneys acquired by the state or it may refer to all moneys previously acquired for the use of the schools of this state. These interpretations show that this is a statute upon the interpretation of which reasonable men may differ.

One most convincing principle of interpretation is the fact that this law has been construed in a given way for the past six years by the executive department of this state. From this fact we may well infer that prior to this year it was never contended that all of this money belonged to the State Common School Equalization Fund. Ever since the enactment of this law the money received from these funds has been equally divided between the Highway department and the State Common School Equalization Fund. Where an executive department of a government has construed a statute in a certain way for many years, that construction will be given great weight by the courts. (59 C. J. 1025). This rule has been recognized although not followed in this state. (State v. Brannon, 86 Mont. 200).

Other states have definitely held that where a law has been construed in a given manner by the executive department of the state and that subsequently meetings of the legislature have been held, that it will be presumed that the legislature knew the construction placed upon the law by the executive department; that such construction met with the approval of the legislature and that same constituted the reason why the law was not amended.

(59 C. J. 1030; State v. Rathbun, 256 Pac. 330; Lewis Sutherland on Statutory Construction, 2nd Ed. No. 474.)

In view of the practical interpretation which has been given this statute, and the fact that the statute is somewhat ambiguous, we do not feel justified in disturbing the interpretation which has been placed upon it for the past six years. Therefore, we hold that moneys received from the Federal Government for oil and gas royalties and rentals are to be distributed equally between the Common School Equalization Fund and the State Highway Fund.