may appear to be, to diminish or otherwise impair the public school fund of the state. (State v. Cave, 20 Mont. 468; City of Butte v. School District No. 1, 29 Mont. 336; State v. Barret. 26 Mont. 62; State v. Rice, 33 Mont. 365; In re Loan of School Fund, 32 Pac. 273; State v. Bartley, 59 N. W. 907.)

The legislature being without authority to legislate in such a way as to affect the integrity of the fund, it necessarily follows that an administrative state board cannot lawfully order the payment of claim out of the same. (Yellowstone Packing Co. v. Hays, 83 Mont. 1.)

But we think the claims are a proper charge against the common school interest and income fund and that no appropriation was necessary to authorize their payment. The public school permanent fund and the common school interest and income fund are trust funds and it would seem that the proviso to Section 193, Revised Codes 1921, applies to the latter. The things on account of which the claims have been made were unquestionably done for the immediate benefit or the ultimate advantage of both funds. To refuse payment of them from any source whatsoever would seriously hamper the state board of land commissioners and the commissioner of state lands and investments in the work of conserving and at times augmenting these funds. (State ex rel. Koch v. Barret, 26 Mont. 62; State ex rel. Galen v. District Court, 42 Mont. 105; 11 C. J. 987; State ex rel. Spencer Lens Co. v. Searle, 109 N. W. 770; State ex rel. Ledwith v. Brian, 120 N. W. 916; 59 C. J. 240; City of Chicago, to Use of Schools v. City of Chicago, 69 N. E. 580; Greenbaum v. Rhoades, 4 Nev. 312; Bryan v. Board of Education, 54 Pac. 409; note to Dickinson v. Edmondson, Ann. Cas. 1917C, at page 917; 56 C. J. 186-191.)

You will, therefore, govern yourself accordingly.

Opinion No. 382

Claims — Payment — Funds — Public School Permanent Fund—Common School Interest and Income Fund —Schools

HELD: Claims arising out of the administration of the Farm Loan Act and the State Lands Act are not a proper charge against the Permanent School Fund but are a proper charge against the common school interest and income fund and no appropriation was necessary to authorize their payment.

November 9, 1933

You have asked us whether or not it is proper for you to draw warrants against the Public School Permanent Fund in payment of several small claims arising out of the administration of the Farm Loan Act and the State Lands Act.

Section 2, Article XI, of the Constitution, designates the items which make up the public school fund, and Section 3 thereof provides that such "fund shall forever remain inviolate, guaranteed by the state against loss or diversion, to be invested, so far as possible, in public securities within the state * * *."

In view of the mandatory character of Section 3 it is clear that the legislature is without power, no matter how pressing the necessity therefor