

**Opinion No. 438**

**Income Tax Administration Fund—  
Common School Equalization Fund—  
Common School Interest and In-  
come Fund—Appropriations  
—Legislative Assembly.**

**HELD:** A tax upon incomes is one of the constitutional methods of raising revenue. .

The Legislature, so long as it keeps within constitutional limits, is vested with exclusive power to determine how, when and for what purposes public funds shall be applied in carrying on the government.

Since the income tax is certain to put far more into the Common School Interest and Income Fund and the Common School Equalization Fund than will be taken out by the appropriation for general administrative expenses, there is no danger of infringement of any constitutional provision.

February 2, 1934.

Your letter to us of recent date is in part as follows:

"Your opinion is respectfully requested as to whether or not a warrant may be legally drawn on the In-

come Tax Administration Fund, Symbol 296 of the records of this office, as the fund is now set up in the office of the State Treasurer.

"Section 32, Chapter 181, Laws of 1933 provides,

"There is hereby appropriated from the general fund of the State of Montana, the common school interest and income fund and the common school equalization fund not otherwise appropriated, the sum of Forty Thousand Dollars (\$40,000), or so much thereof as may be necessary for the purpose of paying the expenses incurred in the administration of this Act in proportion to the distribution of taxes collected under this Act.'

"It is apparent that the Legislature intended to appropriate the sum of Forty Thousand Dollars (\$40,000) for the cost of administering this Act. This sum to be taken from the general fund, the common school interest and income fund, and the common school equalization fund.

"As the records of this office now stand a total amount of Ten Thousand Dollars (\$10,000) has been transferred out of the common school interest and income fund and a like amount out of the common school equalization fund, a total of Twenty Thousand Dollars (\$20,000), which said sum has been transferred into the Income Tax Administration Fund.

"No question could be raised on funds taken from the general fund under the appropriation, and as the common school equalization fund is created from revenue from several sources, it probably could be applied to the use in question. However, the question arises as to the removal of funds from the common school interest and income fund for the purpose in question. \* \* \*

"Under the terms of the Constitution of the State of Montana, Section 5, Article XI, it is made mandatory that 95% of all interest received from the school funds of the State and 95% of all rents received from the leasing of school lands and of all other income from the public school funds shall be annually apportioned among the several school districts, and the remaining 5% of all interest received from the school funds of the State

and the remaining 5% of all rents received for leasing the school lands and of all other incomes from the public school funds shall be added annually to the public school funds of the State and become and forever remain an inseparable and inviolate part thereof.

"It would appear that where Ten Thousand Dollars (\$10,000) has been removed from the fund, which said sum of Ten Thousand Dollars (\$10,000) has been accumulated from interest on the school fund of the State, and for rents received from the leasing of school lands and all other income from the public school fund, that it would be a physical impossibility to distribute 100% of all such income at the ratio of 95% and 5% as provided by the Constitution."

Section 2, Chapter 40, Laws of the Twenty-third Legislative Assembly in Extraordinary Session, provides that, "the State Treasurer shall deposit forty per centum of the (income) taxes paid under this Act to the General Fund, twenty per centum to the Common School Interest and Income Fund, twenty per centum to the Common School Equalization Fund, and twenty per centum thereof to the Emergency Relief Fund. After March 31, 1935, the State Treasurer shall deposit fifty per centum of the taxes paid under this Act to the General Fund, and twenty-five per centum to the Common School Interest and Income Fund, and twenty-five per centum thereof to the Common School Equalization Fund."

A tax upon incomes is one of the Constitutional methods of raising revenue (*O'Connell v. State Board of Equalization*, 95 Mont. 91, 25 Pac. (2d) 114). The fund resulting therefrom is a state fund and the legislature had the right to apportion the proceeds of the tax to any public purposes it saw fit. Unless there is some provision in the fundamental law to the contrary, the power to tax and the power to apportion taxes are identical and inseparable. (*State v. State Highway Commission*, 89 Mont. 205, *Collins v. Humphrey*, 27 S. W. (2d) 102; 61 C. J. 1520).

Furthermore, the legislature, so long as it keeps within constitutional limits, has plenary power in matters relating to appropriations. In other words, it

is vested with exclusive power to determine how, when and for what purposes public funds shall be applied in carrying on the government. (*State v. State Board of Examiners*, 74 Mont. 1: 59 C. J. 197, 238).

The fact that you have set up a fund designated as "The Income Tax Administration Fund" is of no consequence at all. There was no apparent necessity for so doing except, possibly, for convenience in bookkeeping. The warrant for some administrative expense is, in each instance, drawn against the general fund, the common school interest and income fund, or the common school equalization fund, and this may be done in turn as to one or another up to the limit of the appropriation so long as the proper proportion is maintained in charging the three funds. For present purposes, of course so much of any such fund as is not drawn against in this way remains intact.

In conclusion, as the tax on incomes is certain to put far more into the common school interest and income fund and the common school equalization fund than will be taken out of them for general administrative expenses, we see no danger of infringement of the constitutional provision cited or any other constitutional provision.