

ate oil refineries and to engage in the purchase of crude oil and the purchase and sale of gasoline, oils, and lubricants, and making an appropriation therefor, is within the constitution and the appropriation is for a public purpose.

February 9, 1933.

You have asked us whether or not a bill now before the legislature, authorizing the state to construct, purchase or lease and operate oil refineries and to engage in the purchase of crude oil and the purchase and sale of gasoline, oils and lubricants, and making an appropriation therefor will, if passed, be a valid enactment.

As the measure provides for an appropriation, if and when it becomes a law, the money must, of necessity, come or have come from a tax levy in some form or other. The constitution, however, prohibits the levying of taxes for any but public purposes. (Section 11, Article XII.) Should the measure be passed and approved its validity must, therefore, depend on whether the appropriation so made is for a public purpose.

What, then, is meant by the term "public purpose"? It has, indeed, been defined and expounded by different courts in different manners. In a general way it may be said to be such a purpose as has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity and contentment of all the inhabitants or residents within a given political division, as, for example, a state, the sovereign powers of which are exercised to promote such public purpose. (*Green v. Frazier*, 44 N. D. 395, 176 N. W. 11.)

Our Supreme Court in the case of *Lewis and Clark County v. Industrial Accident Board*, 52 Mont. 6, used this language:

"Whether a particular purpose is 'public,' as that term is employed (in the constitution), is not always easy of solution. The power of taxation is a legislative prerogative, and therefore the determination of the question whether a particular purpose is or is not one which so intimately concerns the public as to render taxation permissible is for the legislature in the

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Gasoline Business—Constitutional Law —Appropriations—Public Purpose.

HELD: A bill appropriating public monies for and authorizing the state to construct, purchase or lease and oper-

first instance. (Citing cases.) The general rule of constitutional law that courts will indulge every reasonable presumption in favor of legislation is applicable with peculiar force to the case of a legislative decision upon the purpose for which a tax may be laid."

The subject we are considering has from time to time been brought to the attention of the courts with varying results.

In *State ex rel. Coleman v. Kelly*, 81 Pac. 450, 6 Ann. Cas. 298, the supreme court of Kansas declared a statute like the bill under consideration void as violative of the constitutional provision that "the state shall never be a party in carrying on any works of internal improvement."

In *White Eagle Oil & Refining Co. v. Gunderson*, 205 N. W. 614, the Supreme Court of South Dakota held a statute identical in some respects with this bill to be invalid because the constitution prohibited the use of taxes for one purpose which had been raised for another and different purpose and failed to authorize the state to enter into the business of buying and selling gasoline.

Other courts have held that statutes designed to place the state or a political subdivision thereof in the business of manufacturing cement, buying and selling coal and wood, maintaining and operating ice-making plants and establishing liquor dispensaries were unconstitutional on the ground that they required the expenditure of public funds in carrying on enterprises of a private nature. (See 14 A. L. R. 1157).

On the other hand, several courts of equal standing have ruled that states may with propriety engage in enterprises similar in character to those just mentioned. A fine philosophic discussion favoring this view, but too long to be quoted here, may be found in *State ex rel. Chase v. Clausen*, 188 Pac. 538, 14 A. L. R. 1133. (See, also, 14 A. L. R. 1156.)

It may not be out of place to quote briefly from the opinion in the case of *State ex rel. Public Service Commission v. Brannon*, 86 Mont. 200.

"The intention of the legislature," said the court, "was to prevent the sale of inferior gasoline and kerosene in this state. * * * Society in general is affected; it may be said

that one of these petroleum products is used for one purpose or another by almost every family in the state; the well-nigh universal use of gasoline needs no comment."

Finally, in *State ex. rel. Lyman v. Stewart*, 58 Mont. 1, the court used this highly significant language:

"It is not questioned by counsel for the relator that the state may lawfully engage in the business of operating a grain elevator or in other similar business for the benefit of the public, as distinguished from private business. Indeed, it could not be questioned, for the reason that there is no provision of the Constitution which prohibits it. In the absence of such provision, the legislature is left free to establish, and to provide by law for the conduct of, such a business so long as the plan adopted by it does not impinge upon some other provision or limitation in the Constitution or some one of the powers delegated by the people to the federal government. It is held that the state may establish such institutions under its police power. (Citing cases.) Indeed, it is settled law in this jurisdiction that, subject to these limitations, the legislature possesses all the power of law-making which inheres in any independent sovereignty." (Citing cases.) Continuing, the court said: "Therefore, whether the authority of the legislature to establish and provide for the support of any public institution by the state is to be found in this clause of the Constitution (Section 1 of Article X) or in its general police power, there can be no doubt that it exists." (See, also, *State ex. rel. Cryderman v. Wienrich*, 54 Mont. 390; 59 C. J. 197-200).

After a somewhat thorough study of all the authorities available, our conclusion is that the appropriation is for a public purpose, as the bill in effect declares, and that the bill is within the constitution.