

The Montana Grazing Commission was created by Chapter 194, Laws of 1935, and consists of five members appointed by the Governor. Section 3 provides that the commission at its first meeting shall recommend three persons to the Governor for the position of State Grazing Administrator and the Governor must then appoint one of them to such position. Sections 4, 5, 6 and 8 are as follows:

"Section 4. The commission shall make provision for the protection, administration, regulation and improvement of such grazing districts as may now exist under and by virtue of Chapter 66 of the Session Laws of Montana, 1933, as amended, and as may hereafter be created under and by virtue of any similar laws in the State of Montana. It shall make such rules and regulations and establish such service, enter into such cooperative agreements and do any and all things necessary to insure the objects and purposes of such grazing districts, namely to regulate and coordinate the regulations and by-laws of all districts formed under the state law as to the occupancy and use thereof, to preserve the land and its resources from destruction and unnecessary injury, and generally to provide for the orderly use, improvement and development of the range, and provide for stock passes and drives as may be necessary and proper over, across and through said districts.

"Section 5. The members of the commission shall be allowed their actual expenses and Ten Dollars (\$10.00) per diem for and while attending meetings, such expenses to be audited, allowed and paid as in the case of other expenditures of said commission.

"Section 6. The commission shall have power to fix the salary of the State Grazing Administrator appointed by the Governor, and to appoint such other agents and employees and incur such expenses as may be necessary for the proper conduct of the business of the commission. The State Grazing Commission shall have authority and right to impose such fees against the several grazing associations of the State of Montana and in an amount not in excess of Five Cents (5¢) per head per 'Cow

#### Opinion No. 125.

#### Legislative Assembly—Appropriations —Water Conservation Board— Loans—Grazing Commission.

HELD: 1. Money appropriated by the legislature for one purpose may not be expended for another and different purpose, even though there be some relation between them.

2. The State Water Conservation Board is clearly without power to make a loan of \$10,000 from the State Reclamation Revolving Fund to the Montana Grazing Commission in order to enable the latter to function more efficiently in the near future.

June 26, 1935.

The State Water Conservation Board  
Helena, Montana

You have asked us whether or not it would be proper for the State Water Conservation Board to loan \$10,000 from the state reclamation revolving fund to the Montana Grazing Commission in order to enable the latter to function more efficiently in the immediate future.

Unit' and One Cent (1¢) per head for mature sheep, five (5) mature sheep being considered a 'Cow Unit', to defray any and all expenses created by the State Grazing Commission, and said State Grazing Commission shall from such fees and collections repay to the State Treasurer of Montana any and all appropriations provided by the State of Montana for the establishment of this commission and the administration of this Act when so collected. When such appropriation by the State of Montana is repaid, the balance of such funds shall be held in the state grazing fund, hereinafter created, to be expended by order and direction of the State Grazing Commission for the further administration of the commission, and thereafter said commission shall be maintained by funds obtained from the livestock fees hereinbefore provided.

"Section 8. It shall be the duty of the commission to audit all bills for expenses incurred by it or the administrator in the discharge of the duties of the commission, and when found correct to certify the same to the Board of Examiners of the State of Montana, and when the same are approved by said board, it shall transmit such claims to the State Auditor, who shall thereupon draw a warrant upon the State Treasurer in favor of the party or parties entitled thereto for the amounts so certified and approved, which warrants shall be drawn upon and paid out of the state grazing fund. Said state grazing fund is hereby created and shall consist of the fees paid to said commission therefor and other funds hereafter or heretofore appropriated for said commission and placed to the credit of said fund."

Notwithstanding the intimation in Section 6 of an appropriation in a sum certain for the use of the Grazing Commission, none was in fact made by the legislative assembly during the session of 1935.

The State Water Conservation Board was created by Chapter 35, Laws of the Extraordinary Session of 1933-34. It consists of five members, three of whom are appointed by the Governor. The Governor and the State Engineer are ex officio mem-

bers of the commission. Chapter 169, Laws of 1935, established the state reclamation revolving fund, designated it for convenience the "Conservation Revolving Fund," and appropriated thereto large sums of money. Section 2 provides how the fund shall be expended and reads as follows:

"From the moneys appropriated and credited to the 'Conservation Revolving Fund,' there shall be paid, upon vouchers approved by the board, attested by the secretary, such sums as are found to be necessary or expedient for the investigation and survey of unreclaimed and undeveloped lands, to determine the relative agricultural value, productiveness, uses and feasibility and cost of the reclamation and development thereof; for the investigation and survey of electrification and rehabilitation systems and projects proposed to be financed in whole or in part by the board; such amounts as may be authorized by the board for the reclamation of lands by dyking, drainage, dyking and drainage and irrigation districts duly and regularly organized under the laws of this state and such other districts as shall from time to time be authorized by law for the reclamation or development of waste or undeveloped lands; such amounts as may be authorized by the board for the construction, maintenance and operation of dams and dykes for the conservation of water for reclamation projects or stock reservoirs, electrification or rehabilitation systems or projects authorized under the Water Conservation Act or Acts amendatory thereof or supplemental thereto, provided that whenever deemed practical the board may employ County Surveyors in the assistance and preparation of surveys and investigations conducted by the board."

Generally speaking, state officers, boards, commissions and departments have such powers as are delegated to them by express constitutional and statutory provisions, and such additional powers as are necessarily implied from those which are expressly granted. But executive and administrative officers, boards, departments, and commissions have no powers beyond those granted by express provi-

sion or necessary implication. (State ex rel. Jones v. Erickson, 75 Mont. 429; 59 C. J. 111.)

"No money," declares the Constitution of Montana, "shall be paid out of the treasury except upon appropriations made by law, and on warrant drawn by the proper officer in pursuance thereof, except interest on the public debt." (Sec. 34, Art. V.) And again, "no money shall be drawn from the treasury but in pursuance of specific appropriations made by law." (Sec. 10, Art. XII.)

These provisions are clear and unambiguous and mean just what they say. Therefore, money appropriated by the legislature for one purpose may not be expended for another and different purpose, even though there be some relation between them. (Henderson v. Hovey, 27 Pac. 177; Boyd v. Dunbar, 75 Pac. 695; Brye v. Dale, 250 N. W. 99; Kansas City Bridge Co. v. State, 250 N. W. 343.)

Under our system of government, all power to appropriate money for public purposes rests in the legislature. The executive branch is denied such power. This, of course, is elementary. (State ex rel. Bonner v. Dixon, 59 Mont. 58; LeFebvre v. Callaghan, 263 Pac. 589; 59 C. J. 238.)

Where a fund is created by statute for a particular purpose, it must be administered in accordance with the statute, and may be applied only to the purpose for which it was intended. It cannot be diverted to any other purpose or transferred to any other fund. The power of diversion or transfer is confined solely to the legislature. (59 C. J. 232; Daugherty v. Riley, 34 Pac. (2d) 1005.)

As the State Water Conservation Board is clearly without power to make the loan in question, even though assured of repayment within a reasonable time, we advise that the loan be not made.