

Opinion No. 50.

**Montana Relief Commission, Powers
of—Planning Projects—Relief.**

HELD: Since the legislature has granted the Montana Relief Commission full power to provide means for sustenance of life and the relief of distress among certain people in this State, the Commission must determine as a matter of fact that state planning projects are reasonably necessary to carry out the purposes

expressed in the Act before state funds, appropriated for relief purposes, can be used to defray the non-relief expenditures incurred in the preparation of projects by Planning Committees.

February 23, 1935.

Dr. W. J. Butler
State Administrator
Montana Relief Commission
Helena, Montana

We have your letter of February 15, amplifying your letter of February 8, in which you requested our opinion concerning the right of the Montana Relief Commission to expend funds appropriated by Chapter 56, of the Extraordinary Session Laws of 1933-1934, "on state planning projects."

All the information we have concerning the nature of these projects is contained in your letters of February 8 and 15, from which we quote:

"May we request an opinion from you as to whether or not state funds appropriated for relief projects may be spent on planning projects.

"These planning projects which I have in mind, employ a certain amount of office personnel and field personnel who actually prepare surveying data for the execution of other work projects which are financed through federal emergency relief funds.

"To be exact, we have a planning project in the eastern part of the state which is doing survey work for certain types of water conservation projects which will be financed through relief funds. The question now arises whether or not these planning projects can be financed through state relief funds.

"Under the National Planning Program, Montana has been divided into twelve local Planning Districts. Each District is under the supervision of a group of individuals whose duty it is to plan and compose certain types of projects for both public works and projects to be executed by relief labor. We have furnished these committees with clerical and office help. In certain districts we have furnished also survey parties who have actually gone into the field

and surveyed projects for water development and water conservation; also the surveying for the building of small dykes, dams, ditches and reservoirs. These survey parties and office assistants are strictly non-relief labor. However, the work to be completed by these survey parties is done by relief labor.

"Federal rules and regulations out of Washington designate planning projects as preferred projects, but in making them preferred projects, it is with the understanding that we supply relief labor only.

"The question now arises whether or not state funds appropriated for relief purposes can be used to defray the non-relief expenditures incurred in the preparation of projects by these planning committees."

Chapter 56, supra, provides that: " * * * The funds herein appropriated shall be administered by the Montana Relief Commission under the authority and provisions of Chapter 20, of the Laws of the Extraordinary Session of 1933, and under the same rules and regulations provided by such Commission for the administering of Federal Relief Funds, and for providing means of employment for the unemployed. * * *"

It follows, then, that these two questions must both be answered in the affirmative before it can be said that the Montana Relief Commission may expend its funds "on state planning projects":

1. Do "the rules and regulations provided by the Commission for the administering of said relief funds" permit the expenditures of Federal funds "on state planning projects"?

2. Is the expenditure of such funds reasonably necessary to provide means for the "sustenance of life and the relief of distress among people of the state whom economic conditions, industrial inactivity, or other cause over which they have no control has deprived of support" as provided in Section 1, of Chapter 20, Laws of the Extraordinary Session, 1933-34?

We are unable to answer the first question fully since we do not have a copy of the rules and regulations adopted by the Commission for the

administering of Federal relief funds before us.

As to the second question, since the legislature has granted the Montana Relief Commission full power to provide means for sustenance of life and the relief of distress among certain people in this State (Chapter 20, supra) the Commission must determine as a matter of fact that state planning projects are **reasonably necessary** to carry out the purposes expressed in the Act.

As our Supreme Court has said "it may be laid down as a general principle that the limit of the power of a public officer is the statute conferring the power and what further power is necessarily implied in order to effectuate that which is expressly conferred." (In re Farrell, 36 Mont. 254, 92 Pac. 785. See also City of Wilburton v. King, 162 Okla. 32, 18 Pac. (2d) 1075; Throop on Public Officers, Sec. 542, 46 C. J. 1032.)

And where the decision as to a question of fact is to be made by a particular officer or board, that decision will ordinarily not be reviewed by the courts (46 C. J. 1033), but it may be where there is an abuse of discretion (Yick Wo v. Hopkins, 118 U. S. 356, 6 Sup. Ct. 1064, 30 L. Ed. 220).

We do not have sufficient facts before us from which we could advise you whether or not the courts would disturb a finding of fact that such planning projects are reasonably necessary to carry out the purposes of Chapter 20, supra, and can fairly be said to be implied from the express powers granted therein.

We have no information concerning the organization of the National Planning Program, to which you refer, and whether or not it is an agency of the Federal government authorized by act of Congress. We find no provisions for such a program in the statutes of this State. In your letter of February 15, you refer to "both public works and projects." By "projects" is it meant the improvement and repair of private property? (See Article V, Section 35, Constitution of the State of Montana.) Who are included in the class of "non-relief labor"? In regard to the payment of "non-relief expenditures incurred in the preparation of projects by

these planning committees," referred to in the last paragraph of your letter of February 15, we are enclosing herewith a copy of Opinion No. 336, rendered by this office which may be of interest to you.

We regret very much that we are unable to give you a more definite opinion on this matter, but trust that the general observations we have made above will be of assistance to you. We would add, however, that it would be highly impracticable for this office to render a blanket opinion to cover all projects. A court would not do so, but would require all of the facts and details of each particular project before passing upon its legality.