

Opinion No. 68.

Montana Rural Rehabilitation Corporation—Rural Rehabilitation Corporation — Attorney General, Opinions.

HELD: The Montana Rural Rehabilitation Corporation is a private corporation, organized under the laws of Montana in the form prescribed for other corporations operating for profit, and the Attorney General is

not permitted to act as its legal adviser.

March 26, 1935.

Dr. D. M. Warren
Second Vice-President
Montana Rural Rehabilitation Corporation
Helena, Montana

We have your letter of March 19, requesting the opinion of this office as to the negotiability of a proposed form of promissory note to be used by the Montana Rural Rehabilitation Corporation.

Although, for reasons hereinafter stated, we are not permitted to render official opinions to the Montana Rural Rehabilitation Corporation, as a matter of courtesy I will express my personal opinion to you upon the matter.

I think that portion of the note which provides that the note is payable "in cash or in part cash and part work, at the option of the Montana Rural Rehabilitation Corporation," renders the note non-negotiable. However, if the words "Montana Rural Rehabilitation Corporation" were stricken and the word "holder" were inserted, the note would be negotiable.

Although the law requires that in order to be negotiable the instrument must contain an unconditional promise, or order, to pay a sum certain in money (Sec. 8408, R. C. M. 1921), there is another provision which provides that the negotiable character of an instrument otherwise negotiable is not affected by a provision which gives the holder an election to require something to be done in lieu of payment of money. (Sec. 8412, R. C. M. 1921, as amended by Chapter 143, Laws of 1923).

As the note is now written it does not give the "holder" the option to accept some other service in lieu of money, but gives only the original payee, namely, the Montana Rural Rehabilitation Corporation, the right to elect just how the payment shall be made.

The foregoing matter is not one of policy, or concerning any grave question of law affecting the organization or powers of the corporation. It is merely a question concerning a minor

detail in the functioning of the corporation, and there can be no doubt that in the future there will be numerous questions of detail arise. Although we are not permitted to advise private corporations, we would bend every effort to assist in settling any problem of major importance. We cannot, however, undertake to pass upon the great mass of detail which the operation of the corporation will entail.

The Montana Rural Rehabilitation Corporation is a private corporation, organized under the laws of this state in the form prescribed for other corporations operating for profit. I realize, of course, that it is not intended that the corporation shall profit, but nevertheless that is the form which the incorporators have chosen to adopt. This office is not authorized to use its appropriation of State money, or its facilities, to advise or represent individuals or corporations. Under Section 199 (5), R. C. M. 1921, this office acts as legal adviser to all state officers, boards of county commissioners and county attorneys and, of course, only in matters relating to their official duties.

We note that your letter is written on the printed stationery of the Montana Relief Commission and we are aware that you are also Assistant State Administrator of Relief, as well as Second Vice-President of the Montana Rural Rehabilitation Corporation. It is true that Section 14 of Chapter 109, Laws of 1935, provides that "The Attorney General shall act as legal adviser to the Montana Relief Commission and shall perform such services as it may request." But it is our opinion that the Commission is limited to requests for opinions that are concerned with the affairs of the Commission as such. The Commission is not authorized by Section 14, supra, to request the Attorney General to advise or represent any private person, partnership, company or corporation.

We have not overlooked Senate Joint Resolution No. 8, adopted by both houses of the Twenty-fourth Legislative Assembly, which provides: "That the Montana Rural Rehabilitation Corporation be recognized and designated as a public agency and instrumentality of the State * * *

and authorizing the various officers, boards, courts and governing bodies of the State now engaged in the relief of destitution and unemployment to cooperate with said corporation."

This resolution does not give either this office or the Montana Relief Commission any additional powers or impose any additional duties. It is "merely a suggestion," or "formal expression of the opinion or will of the legislative assembly, adopted by vote"; it offers no protection and does not have the effect of law. (54 C. J. 721.) The case of *State ex rel. Peyton v. Cunningham* (39 Mont. 197, 103 Pac. 49, 18 Ann. Cas. 705), is squarely in point. In that case the court held that a house joint resolution conferring authority upon the state game warden to appoint the widow of a deputy warden, who was killed in the discharge of his duties, a deputy in addition to those already authorized by law was invalid and that on mandamus the State Auditor properly refused to issue a warrant as such deputy warden.

The following language of Chief Justice Erantly in the *Peyton* case is applicable here and may be quoted at length to advantage:

"* * * under the Constitution the question whether an Act of legislation has the force of law does not depend merely upon the constitutional majorities of the two Houses having so determined, but also upon certain requirements to be observed as to the form in which, and the mode by which, their will is expressed. No determination can have the force of law unless these requirements have been observed. (Cooley's Constitutional Limitations, 7th Ed., p. 186; *State v. Platt*, 2 S. C. 150, 16 Am. Rep. 647; *Burritt v. Commissioners of State Contracts*, 120 Ill. 322, 11 N. E. 180.)

"Article V of the Constitution declares:

"Sec. 19. No law shall be passed except by bill, and no bill shall be so altered or amended on its passage through either house as to change its original purpose.

"Sec. 20. The enacting clause of every law shall be as follows: 'Be it enacted by the Legislative Assembly of the State of Montana.'

"Sec. 23. No bill, except general appropriation bills, and bills for the codification and general revision of the laws, shall be passed containing more than one subject which shall be clearly expressed in its title; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed.'

"These provisions are to be construed as mandatory and prohibitory, because there is no exception to their requirements expressed anywhere in the Constitution. (Section 29, Article III.) Hence they are exclusive, and any expression of its will by the legislative body as law, even though it be by unanimous vote, in a form other than as therein prescribed, is void.

"The resolution under which *relatrix* claims is not in the form of a bill. It has no enacting clause. It has no title. Therefore, though it was passed by both Houses and approved by the governor, it is of no avail as an authoritative expression of the legislative will upon the subject with which it deals. It is not, in effect, an amendment to the Act of March 5, nor, as an independent piece of legislation, can it be considered as having created an office. Addressed, as it is, to the state game and fish warden, it has not even an advisory force, since it advises him to appoint *relatrix* to an office which does not exist. This conclusion seems inevitable, in view of the provisions of the Constitution referred to. If the legislature may disregard these provisions, there is no other which it might not with equal propriety disregard, with the result that that branch of the government would act without limitation or restriction other than the whim or caprice of the majority. So the courts of all the states having constitutional provisions similar to them have refused to recognize mere resolutions adopted by the legislature, whether joint or concurrent, or whether approved by the executive or not, as having the force of law. (*Collier & Cleveland Lith. Co. v. Henderson*, 18 Colo. 259, 32 Pac. 417; *Mullan v. State*, 114 Cal. 578, 46 Pac. 670, 34 L. R. A. 262; *May v. Rice*,

Auditor, 91 Ind. 546; Rice, Auditor v. State ex rel. Drapier, 95 Ind. 33; Reynolds, Auditor, v. Blue, 47 Ala. 711; State v. Kinney, 56 Ohio St. 721, 47 N. E. 569; Burritt v. Commissioners of State Contracts, 120 Ill. 322, 11 N. E. 180; City of Antonio v. Micklejohn, 89 Tex. 79, 33 S. W. 735; Boyers v. Crane, Auditor, 1 W. Va. 176.) The respondent properly refused to issue the warrants demanded."

We might add in passing that even if Senate Joint Resolution No. 8 had been passed and approved as a law, instead of as a resolution, it is possible that additional objections could be made to such a law in so far as it would not comply with Article V, Section 26 of the Constitution of Montana, which forbids the legislative assembly from passing any local or special laws granting exclusive privileges to any corporation, and Article XIII, Section 1, which provides: "Neither the state, nor any county, city, town, municipality, nor other subdivision of the state, shall ever give or loan its credit in aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association, or corporation, or become a subscriber to, or a shareholder in, any company or corporation, or a joint owner with any person, company or corporation, except as to such ownership as may accrue to the state by operation or provision of law."

It is with sincere regret that we have been compelled to advise you as we have for we understand that the Montana Rural Rehabilitation Corporation is undertaking a splendid work for the everlasting benefit of the people of this State, and we wish to assure you that this office would be happy to be of assistance to the corporation in its great efforts. But, as you will understand, it is our sworn duty in all things to act only according to the law.