

Opinion No. 140.**Legislature — Appropriation, Expenditure in Excess of — Board of Examiners, Power of.**

The Board of Examiners in case of unanticipated increase in the numbers of pupils of the Montana State Training School may authorize an increase in expenditure of said institution in excess of the Legislative appropriation.

August 17, 1937.

State Board of Examiners
Capitol Building

Gentlemen:

You have submitted the following:

"We are attaching hereto a letter from President Howard Griffin of the Montana Training School, together with a report dated July 7, 1937. In this report President Griffin petitions the Board of Examiners to authorize an increase in the enrollment of the training school by one hundred during the next biennium. He also intimates that such an increase would cause him to expend more money than was appropriated for the maintenance of the school for the biennium, but contends that under the provisions of a law passed by the recent legislature the Board of Examiners could declare an emergency to exist and authorize the increasing of the enrollment regardless of the fact that it would cause an overdraft in the appropriation, which is prohibited by House Bill No. 6 passed by the recent legislature.

"Before the Board of Examiners will take any definite action in this matter it has instructed the clerk to ask your department for an opinion as to whether the Board can declare such an emergency and authorize expenditures in excess of the legislative appropriation."

Section 2, Chapter 40, Laws 1937, provides:

"Section 2. If it shall at any time appear to the state board of examiners that due to an unanticipated increase in the number of inmates or patients of any penal, custodial or charitable institution, or that due to any unforeseen and unanticipated emergency in the case of such institutions, or that due to any unforeseen and unanticipated emergency in the case of any other state institution, educational institution, department, board, commission or bureau, the amount appropriated for the maintenance and operation of any state institution, educational institution, department, board, commission or bureau, with all other income of the institution, if any, will be insufficient for such purposes during the year for which the appropriation was made, on written application to such state board of examiners, setting forth in detail the reasons therefor, said board of examiners, by an order made and entered at length, with such application, in its minutes, may authorize an expenditure to be made during such year for such purposes in such an amount in excess of such income for said year as said board of examiners may deem necessary and required, and the board, managerial staff or other authority in charge of any state institution, educational institution, department, board, commission or bureau, may expend such amount, and no more, for such purposes during such year; provided that any increase in expenditure so authorized for any penal, custodial or charitable institution due to increase in number of inmates or patients, shall not exceed the cost per inmate day as set forth in the last preceding legislative budget for each such institution. Said state board of examiners shall report to the next legislative assembly the amount expended or indebtedness or liability incurred under such authority granted by it and request that a deficiency appropriation bill be passed to take care of and pay the same."

In view of this express provision of the statute it is my opinion that if the Board should find as a fact that such emergency exists as described in said Section 2, it may authorize expenditures

in excess of the Legislative appropriation.