

Opinion No. 183.**Appropriations—Expenditures in Excess of Amount Appropriated Each Year.**

HELD: Chapter 40, Laws of 1937, prohibits the expenditure by any state officer, department, board, commission or bureau, in any one year in excess of the income appropriated for such year.

October 20, 1937.

Mr. W. L. Fitzsimmons
Clerk State Board of Examiners
Ex-officio Consolidated Boards
The Capitol

Dear Mr. Fitzsimmons:

You have submitted the following:

"At the request of the Board of Examiners I am writing for an opinion with reference to the appropriations made for the State Normal College at Dillon under the provisions of House Bill No. 168, Twenty-fifth Legislative Session Laws.

"Under the date of April 15, 1937, the Board of Examiners approved a contract for electric installation at the Normal College after the State Board of Education had approved the general plan at a meeting February 20, 1937. This contract was entered into with the National Electric Supply Company of Butte to make certain alterations and installations at a cost of \$3,221.00. Under the terms of the contract no payments were to be made until after July 1, 1937, then any unpaid portion sixty days after July 1st was to bear interest at the rate of six per cent per annum.

"In addition to the above contract, there was found after the contract was let that it would be necessary to install new transformers at the in-

stitution and these were installed by the Union Electric Company at a cost of \$1,010.85. These transformers were installed with the understanding that the full installation price could be paid or a monthly rental charge would be made of \$21.37½ per month, provided that if the entire installation was paid for within a year all rentals would be deducted from the purchase price.

"The question now presented to the Board of Examiners by President Davis of the Normal College is whether both of these contracts might be paid in full which would amount to \$4,231.85. In view of the fact that it is possible such payment might cause the Institution to exceed its first year's appropriation and thereby violate the provisions of Chapter 40, Session Laws of 1937, particularly Section 1 and bring the authorities of the institution within the penalties provided in Section 4.

"Our question is whether, with the information set forth above, it would be possible to use the first year's appropriation to pay the above mentioned claims by the Board of Examiners declaring an emergency to exist as provided in Section 2, Chapter 40, and if this should cause a deficiency in the first year, or in the first and second year combined, if it could be considered a violation of the general provisions of Chapter 40."

Section 1, Chapter 40, Laws of 1937, provides:

"It shall be unlawful for the board of trustees, executive board, managerial staff, president, deans and faculty, or any other authority of any state institution maintained in whole or in part by the state, or for any officer, department, board, commission or bureau, having charge of the disbursement or expenditure of the income provided by legislative appropriation, or otherwise, to expend, contract for the expenditure, or to incur or permit the incurring of any obligation whatsoever, in any one year, in excess of the income provided for such year, or in excess of such income as decreased by the state board of examiners, under and in accordance with the provisions of Section 3 of this act, for such year, or for the state board of examiners,

or any supervisory board or authority either directly or indirectly to authorize, direct or order any such institution, officer, department, board, commission or bureau to increase any expenditures, except as hereinafter provided, and it shall be and is hereby made the duty of any and all of such institutions, officers, departments, boards, commissions and bureaus to keep such expenditures, obligations and liabilities within the amount of such income."

Except in cases of emergency, as provided in Section 2 of said Chapter 40, no expenditures may be made in one year in excess of the income provided for such year. The statute is specific and Section 2 provides the only exception. In my opinion, if the payment of the above mentioned contracts in full would cause the expenditure during the current fiscal year of more than the appropriation for such year, as provided by House Bill 168, Laws of 1937, such excess expenditure would be in violation of said Section 1, Chapter 40, unless the excess could be authorized under Section 2 of said chapter. It is immaterial that a saving of interest could be effected as that in itself would not justify the expenditure contrary to the specific prohibition made by the legislature in the absence of legislative sanction. The fact that House Bill 168 was passed subsequent to Chapter 40, does not render Chapter 40 ineffective because the two acts are not necessarily inconsistent or repugnant to each other. House Bill 168 fixes the appropriation for each year and this is consistent with the limitation of expenditure each year, as declared in Chapter 40.