

Opinion No. 227.

**Public Welfare—Appropriations,
Period of—Transfer
of Funds.**

HELD: 1. The reappropriation provided for by Part I, Section II, subsection (f), Chapter 82, Laws of 1937, may be used during the entire year period and is not limited to the first year.

2. Any balance from said reappropriation, not required for the contracts, agreements and obligations of the boards, bureaus and commissions for which originally appropriated, may be used for any ordinary and legitimate expenditure of the state department of public welfare.

3. It will not be lawful to use unexpended balances of the regular appropriation for the year terminating March 1, 1938, during the next ensuing fiscal year, in addition to the regular appropriation for the second fiscal year.

4. Transfer of funds from specific accounts, as provided by Part VIII, Section V, Chapter 82, Laws of 1937, may be made by resolution of the board, without first drawing the money to be transferred, from the state treasury.

January 15, 1938.

Hon. I. M. Brandjord
Administrator, State Department of
Public Welfare
Helena, Montana

Dear Mr. Brandjord:

In response to your request, we submit herewith our opinion to the following questions:

"1. May such part of the funds re-appropriated for the state department of public welfare as provided by Part I, Section II, subsection (f) of the Public Welfare Act, Chapter 82, Laws of 1937, as is not used during the fiscal year terminating March 1, 1937, be used during the next fiscal year?"

In my opinion this question should be answered in the affirmative. We think that the legislature intended that this sum should be appropriated for the two year period. We reach this conclusion because the legislature did not specifically limit its use for the one year period and we are not at liberty to amend the appropriation by reading said limitation into it. We think this is sufficient basis for our opinion. Moreover, since the appropriation was made subject to "all lawful outstanding contracts, agreements and obligations" of the boards, bureaus and commissions for whose use such sum had theretofore been appropriated, which contracts, agreements and obligations, of course, could not at once be determined, thus leaving uncertainty, not only as to the amount which would ultimately be available, but also as to the time when all might be available, it is reasonable to suppose that the legislature desired to have the longer period of two years rather than the shorter term of one year in which the amount available might be determined.

In addition, and in support of the legislative wisdom in not limiting the time, it might be urged that since the state department of public welfare was an entirely new organization, created by the same legislative assembly, the amounts needed for the various classes of public assistance could only be approximately estimated; in fact, authority was vested in the state board of public welfare to transfer funds from accounts in which they were not

needed, to accounts where they were needed. (Part VIII, Section V, Chapter 82, Laws of 1937.)

"2. May any balance from the said 'reappropriation' not required for paying obligations taken over from the Montana Relief Commission and the Montana Old Age Pension Commission be used for any ordinary and legitimate expenditure of the State Department of Public Welfare?"

Since such sum was reappropriated generally "to the state board created and provided for in this Act," and was not limited to any particular class, it is my opinion that the balance may be used for any ordinary and legitimate expenditure of the state board of public welfare.

"3. Will it or will it not be lawful to use unexpended balances of the regular appropriation for the year terminating March 1, 1938, during the next ensuing fiscal year in addition to the regular appropriation for the second fiscal year?"

By regular appropriation, I understand you mean the sum of \$2,001,000, appropriated for each year by Part VIII, Section IV, subsections (a) and (b). Subsection "a" fixes the first year "beginning March 2, 1937, and ending March 1, 1938" and subsection (b) fixes the second year "beginning March 2, 1938, and ending March 1, 1939." In view of the prohibition contained in Section 1 of Chapter 5 and of Chapter 40, Laws of 1937, which limit the expenditures for each year to the amount appropriated for each year, it is my opinion that it would not be lawful to use any unexpended balance of the regular appropriation for the year terminating March 1, 1938, during the next ensuing fiscal year, in addition to the regular appropriation for the second fiscal year.

"4. May a balance of any specific account, not needed for the purpose for which the account is earmarked, be transferred to a specific account for which the sum earmarked is insufficient, upon order by the State Board of Public Welfare without drawing the money to be transferred from the State Treasury?"

We see no reason for withdrawing from the state treasury money to be

transferred before such transfer is made. We think it is sufficient for the state board of public welfare to pass resolutions specifying what transfers are to be made without drawing the money to be transferred from the state treasury. The proper transfer, as well as record, may then be made by the state treasurer.