

Opinion No. 230.

**Fish and Game Commission—Funds,
By Whom Expended—Appropriations.**

HELD: The sum of \$7,500, funds of the fish and game commission, which Section 3685 provides shall be transferred to the bounty fund, in the absence of specific appropriation by the legislature, may not be expendable by the livestock commission for that purpose, and therefore no funds of the fish and game commission may be expended by any other agency.

January 19, 1938.

Hon. J. A. Weaver
State Fish and Game Warden
The Capitol

Dear Mr. Weaver:

You have requested my opinion as to whether any funds of the fish and game commission are to be expended by any other agency than the fish and game commission. You have advised that under the Pittman-Robertson Act of Congress, which provides for a tax on firearms and ammunition, the fish and game commission of the State of Montana will be entitled to receive an allocation of approximately \$92,000, provided none of the funds of the fish and game commission are expended by any other state agency.

Section 3685, R. C. M. 1935, provides in part:

“The sum of seven thousand five hundred dollars (\$7,500.00) shall be transferred on or before January first of each year from the fish and game fund to the bounty fund of the state to be used to pay bounties on predatory animals as provided by law:
* * *.”

House Bill No. 337, page 661, Laws of 1937 provides:

“For the payment of bounty claims, so much thereof as may be necessary as provided in Section 3417, Revised Codes of Montana, 1935.”

Section 3417 was repealed by Chapter 73, Laws of 1923. If the legislature intended to refer to Section 3414 instead of 3417, it does not in any way affect the sum of \$7,500, referred to in Section 3685, for Section 3414 has to do with the "five per cent of all license money collected by the several county treasurers of the state."

Apparently no appropriation was made of the \$7,500 provided in Section 3685. This section in itself does not assume to appropriate this sum; it merely provides that it shall be transferred to the bounty claim fund to be used to pay bounties. Section 34, Article V of the Montana Constitution provides:

"No money shall be paid out of the treasury except upon appropriation made by law, * * *"

Section 10, Article XII Id., reads:

"* * * no money shall be drawn from the treasury but in pursuance of specific appropriations made by law."

Even if Section 3685 could be considered as an appropriation, it would not be effective for that purpose for the reason that Section 12, Article XII of the Montana Constitution provides:

"* * * No appropriation of public moneys shall be made for a longer term than two years."

See, further, Opinions of the Attorney General, Volume 15, p. 20.

Since there is no appropriation of the sum of \$7,500, referred to in Section 3685, it would be an idle act to transfer it to the bounty fund for, not being expendable for that purpose in the absence of appropriation, it would revert to the fund from which originally appropriated. (Section 304, R. C. M. 1935.)

It is therefore my opinion that no funds of the fish and game commission may be expended by any other State agency.