

or not, under the circumstances outlined, you may expend money appropriated for this fiscal year ending March 1, 1938, for the above purpose.

You are advised that under Section 1, Chapter 40, Laws of 1937, it is provided as follows:

"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."

Applying the provisions of this section to the facts you have given, it is my opinion that your department may contract for the expenditure or incur the obligation therein stated, so long as the same does not exceed the appropriation for the fiscal year ending March 1, 1938. In my opinion it would not alter the situation if actual payment for the expenditure was not made until after the end of the fiscal year. However, I desire to call your attention also to Section 3 of Chapter 40, which provides as follows:

"Prior to the beginning of each fiscal year the board of examiners must cause an inspection and inventory to be made of the stocks of

Opinion No. 251½.

Public Welfare—Appropriations—Purchases Out of Current Fiscal Funds.

HELD: Purchases may be made out of current fiscal funds so long as the expenditure does not exceed the appropriation, even though material, supplies, etc., are not delivered until after the end of the fiscal period

February 23, 1938.

Mr. B. L. McFerran
Purchasing Agent, State Department
of Public Welfare
Helena, Montana

My Dear Mr. McFerran:

You have advised us that your department is desirous of purchasing a quantity of woolen cloth for use in the Works Progress Administration sewing rooms for making winter garments for relief clients; that in order to get the program under way in time to provide these garments by the beginning of the winter of 1938, it will be necessary to obtain this wool as quickly as possible.

You ask if it would be possible to buy this cloth and take delivery within the next thirty days, so that the same may be paid for out of this fiscal year's appropriation. And further, if it would not be possible to transfer title to this cloth to the Works Progress Administration and store the same in a bonded warehouse until such time as the cloth is needed for production purposes. In short, your question is as to whether

supplies, materials, and articles on hand at or in or at the disposition of such institution, board, bureau, commission or department and said board must decrease the expenditures for the ensuing fiscal year by the amount or value of such supplies, materials, and articles so on hand or available, capable of utilization in such ensuing period and where further quantities thereof, or of substitutes therefor, will not be required, said decrease shall be effective upon the entry of order therefor on the minutes of the said board of examiners, and written notice thereof to the office, officer or employee affected by such order of said board; provided, that the aggregate inventoried value of such stocks of supplies, materials, and articles on hand at or in or at the disposition of any such institution, board, bureau, commission or department as of June 30, 1936, as shown by the records of the state purchasing agent, shall not be deducted from appropriations available for such institutions."

Under the provisions of this section, the board of examiners is directed to cause an inspection and inventory to be made of the stock, supplies, materials, and articles on hand at or in or at the disposition of the Department, and to decrease the expenditure for the ensuing fiscal year by the amount of value of the stock, supplies, materials, or articles on hand or available, capable of utilization in such ensuing period. In other words, before the commencement of the fiscal year, March 2, 1938, if the inventory of your department discloses these materials on hand capable of utilization during that fiscal year, your appropriation for said fiscal year would be decreased to that extent. But on the other hand, if said inventory did not disclose the materials on hand or at the disposition of the Department for utilization during the ensuing fiscal year, the appropriation would not be decreased. As to whether or not the money expended from the present fiscal appropriation for the materials you mention would be deducted from your next fiscal year appropriation, would depend upon whether or not the inventory mentioned in Section 3 would disclose the situation there mentioned.

Your question as to the purchase of the sewing machines under similar circumstances would come under the opinion hereinabove rendered in reference to the purchase of woolen cloth.