

May 24, 1938.

Miss Ruth Reardon
Superintendent of Public Instruction
The Capitol

My dear Miss Reardon:

In accordance with your letter relating to the payment of salaries of a music supervisor and a rural supervisor for the Department of Public Instruction, I beg to submit the following opinion.

It appears from your communication that you have appointed a rural supervisor and a music supervisor, each to receive an annual salary of twenty-five hundred dollars; that the legislature provided for the appointment of such officials and fixed their salaries through the enactment of Chapter 149, Laws of 1937, although no appropriation was made to pay the same. The question to be determined is whether or not such expenditures can be made from the general fund in the same manner as though an appropriation was actually made, or whether or not it is necessary for the Board of Examiners to grant a deficiency appropriation under the authority of that legislation providing for appropriations for salaries fixed by law. (See House Bill No. 246, pages 646, 647, Laws of 1937.)

Section 34, Article V of our Constitution provides:

"No money shall be paid out of the treasury except upon appropriations made by law, and on warrant drawn by the proper officer in pursuance thereof, except interest on the public debt."

When the legislature enacted Chapter 149, supra, it was the intent, and it did actually appropriate funds for the payment of said appointees to be appointed as provided therein. Such legislation conformed to the Constitutional requirement in that the same was an appropriation provided by law, although said appropriation was not included in the legislative budgetary appropriation.

It may be noted that during the year 1935 the sum of Four Hundred Ninety-Two Dollars was paid, as the salary of the then acting governor of the State of Montana, from the general fund, although no budgetary authority for such expenditure was made by the legislature. The fact that the ensuing

Opinion No. 284.

Appropriations—Salaries.

HELD: An Act of the Legislature providing for appointment of a state officer and fixing salary thereof, without making specific budgetary appropriation, is sufficient to constitute an appropriation from general fund for payment of such salary.

legislature did not legislate in respect thereto, while not controlling, is persuasive as evidencing legislative intent that a general statute, such as Chapter 149, authorizing appropriations and fixing salaries, constitutes a definite Constitutional appropriation. (Section 20, Article VII of the Montana Constitution.)

The court said, in the case of *State ex rel Tipton v. Erickson*, 93 Mont. 466, at page 472:

“* * * This setting apart or designation of the purpose for which public money may be used must be ‘made by law.’ This provision, however, does not require the introduction in the legislature of an appropriation bill, but the act may be accomplished in any manner receiving the sanction of the law.”

State ex rel Rotwitt v. Heckman, 9 Mont. 370;

State ex rel Bück v. Heckman, 10 Mont. 499.

Therefore, it is my opinion that the salaries for said officials have been appropriated by law and may be paid out of the general fund, and need not be paid out of a deficiency budgetary appropriation to be allowed by the Board of Examiners.