

Opinion No. 291.

**State Capitol Building—Funds—
Appropriations—Rentals.**

HELD: 1. The rentals paid for space in the Capitol Building are deposited in the Capitol Building Custodian Fund and used by the custodian as part of his appropriation.

June 22, 1938.

Honorable John J. Holmes
State Auditor and Ex-officio
Insurance Commissioner
Capitol Building
Helena, Montana

Dear Sir:

The State Board of Examiners, by virtue of its authority over the Capitol Building and grounds, has authorized the custodian to permit several boards, such as the Water Conservation Board, the Fish and Game Commission, and the like to occupy quarters in the State Capitol Building, and they have set a rental fee therefor. This rental has been paid into the State Treasury and credited to the fund of the custodian.

For operation of the Capitol Building the Twenty-fifth Legislative Assembly appropriated money for salaries fixed by law; for salaries of postmaster and assistant; for Capitol repairs and replacements; and for operation. (House Bill No. 337.) This money has been set aside for the Capitol Building. In addition the rental from the various boards and offices has been paid into this Capitol Building fund. The question is whether the income from rentals can validly be expended in addition to the above appropriation, or whether such rentals should go into the State Treasury, from which no withdrawals could be made except upon appropriations by law. (Section 34, Article V, and Section 10, Article XII, of the Montana Constitution.)

It is the duty of the custodian of the State Capitol to supervise and direct the work of caring for and maintaining the State Capitol, its building, equipment and grounds, under the direction of the State Board of Examiners. (Section 311, Revised Codes of Montana, 1935.) The legislature, by House Bill No. 337, appropriated the money by which he carries out these duties. This appropriation is to take care of the state departments which are required by law to maintain their offices in the State Capitol; however, there are other administrative departments which are part of the governmental machinery of the state but which might maintain their offices elsewhere. These departments often want office space in privately owned buildings, so the legislature has appropriated sufficient money so that a reason-

able rental might be paid. When such departments move into the Capitol Building, the maintenance cost, janitor hire, operation expense, etc., is necessarily increased. Then it is the duty of the State Board of Examiners to estimate the amount of such increased cost and charge such departments therefor. The rental paid by these departments is actually only compensation for the added expense to the state, and the fact that it is paid out of the separate appropriation for that department to the State Board of Examiners and deposited to the credit of the Capitol Fund is merely a book-keeping transaction for the convenient accounting of the various funds, and in order that the custodian may supervise the operation and maintenance of the whole building as required by law. What actually happens is that these various boards and offices which are required to pay rent for office space in the Capitol Building are paying for supplies, lights, janitor service, etc., out of their own appropriation. In effect the custodian has advanced these supplies and services to these boards and is being repaid by the so-called rentals.

Then it is apparent that the Constitutional provision requiring an appropriation for the expenditure of all funds has been complied with, because the various boards have a specific appropriation for their funds and the net result is that they are paying for supplies and services they have used. Therefore, it is my opinion that the rentals should be credited to the Capitol Fund to be used and allocated as the custodian, under the supervision of the State Board of Examiners, directs, and all claims on such funds should be honored as long as there is money available, whether from the rentals or the original appropriation.