

Opinion No. 310.**State Educational Institutions—Residence Halls—Cost of Constitution Payable From Net Income.**

HELD: Operating cost of residence halls must be paid out of income from such halls and not from appropriations made for expenses.

August 2, 1938.

State Board of Education
Capitol Building
Helena, Montana

Gentlemen:

Through Dr. G. H. Vande Bogart, you have submitted the following:

“There appears to be a question concerning the possibility of paying for heat, light, water and power of the Women’s Residence Hall at Northern Montana College, out of other funds than the net income of said project as contemplated in Section 9a of the resolutions of the State Board of Education bond agreement, inasmuch as the income in the Women’s Residence Hall, WPA Docket

No. 2294, under existing economic conditions in Northern Montana, has not been sufficient to meet the bond payment. In order that this question may be clarified we should appreciate your opinion as to the legality of such payments."

The Women's Residence Hall at Northern Montana College was constructed under authority granted by Chapter 80 of the Political Code, Sections 836.1-836.6, R. C. M. 1935. It appears to have been the intention of the legislature that the state should not be obligated for the payment of the cost of construction of residence halls and that such cost should be paid from the net rents and income from such halls. Section 836.4 provides:

"No obligation created hereunder shall ever be or become a charge against the State of Montana but all such obligations, including principal and interest, shall be payable solely:

"(a) From the net rents and income pledged. * * *

Section 836.6 provides further:

"No state funds shall be loaned or used for this purpose. This shall not apply to funds derived from the **net rents and income** of residence halls now or hereafter owned by the State of Montana." (Emphasis ours.)

The question you have submitted is whether operating expenses such as heat, light, power and water may be paid out of other funds than the income of the residence halls, thus leaving a larger income to apply to cost of construction. It is true House Bill No. 168, Laws of 1937, pages 631, 634, does appropriate, for salaries and expenses to the Northern Montana College, the sum of \$59,000. It is also true that such appropriation is used to pay the operating expenses to the other units of the college. Section 836.1 Id., however, requires that the operating expenses of the residence halls be paid from the income. This section reads:

"The state board of education is authorized to: * * *

"(b) Rent the rooms in such residence halls and provide board to the students, officers, guests, and em-

ployees of said institution at such rates as will insure a reasonable excess of income **over operating expenses.**" (Emphasis ours.)

If the board could use the appropriation for expenses to pay the operating cost of the residence halls constructed under authority of the above mentioned sections, the state would be paying the cost of construction indirectly, contrary to Section 836.4 Id. Furthermore, Section 836.1 requires that operating expenses be deducted from the income and the excess applied to cost of construction. In other words, it is impossible for me to read the sections above cited without reaching the conclusion that the net income and not the gross income must be applied to cost of construction.

For the reasons stated, it is my opinion that the operating expenses, such as heat, light, power and water, may not be paid out of the appropriation for expenses made by the Twenty-fifth Legislative Assembly, but that they must be paid out of the income from the residence hall.