

## Opinion No. 212.

**Appropriations—State Institutions—  
Grain Laboratory—Wheat Testing—  
Special Funds—Constitutional Law—  
Section 908, R. C. M., 1935—H. B. 140,  
L. 1939—Montana Experimental  
Station—Animal Husbandry.**

HELD: Fees collected for wheat testing by the Grain Laboratory, under Section 908, are special funds and no appropriation is necessary. Such fees must be used for such purposes and no other.

Moneys received by the experimental station in the sale of animals raised for experimental purposes can be used by such experimental station as they are appropriated by House Bill 140, Laws of 1939.

April 3, 1940.

Dr. H. H. Swain  
Executive Secretary  
The University of Montana  
The Capitol

Dear Dr: Swain:

You have requested my opinion on the question whether the fees sent in by farmers to the Montana Grain Laboratory for testing samples of wheat sent in by them are available for making such tests after the fund of \$2,500, provided by House Bill 140, Laws of 1939, p. 612, has been exhausted. You advise:

"In order to clarify the matter may I say that the Grain Laboratory was obliged to discontinue the service mentioned in Section 908 of the Revised Codes of Montana, 1935, before I wrote you requesting an opinion, because of the fact that claims regularly submitted for expenses incurred in the rendering of these services and designated to be paid out of the fees received for such services were rejected and we were notified that no future expenditures of such fees could be made because of the fact that such expenditures had already been made up to February 1, 1940, to the full amount of the \$2,500 mentioned in the appropriation bill."

Your statement corrects an impression erroneously gained by some persons that the payment of these claims was held up because of an opinion issued by me, whereas it appears that

the claims had been rejected prior to your request for my opinion. We now address ourselves to the question whether such claims should be paid in the future.

Section 908, R. C. M., 1935, provides:

"Samples of wheat sent in by individuals, the results from the testing of which samples are of no general or market value, shall be charged a fee sufficient to cover the cost of making the test. Fees so collected are to be deposited in a fund in charge of the director of the experiment station, to be used in support of the laboratory. Any surplus remaining in this fund at the close of the state's biennium shall be turned over to the state treasurer and shall revert to the state general fund."

It is evident that the legislature by this enactment intended to create a special fund to be used solely for the special purpose of testing wheat. While Section 34, Article V of the Montana Constitution provides that no money shall be paid out of the treasury except upon appropriation made by law, Section 908 has to do only with special funds and does not violate this constitutional provision.

In *State v. State Board of Education*, 97 Mont. 121, 132, 33 Pac. (2) 516, our Supreme Court said:

"As the Act has to do only with special funds to arise from the operations authorized and in connection therewith and devoted to a special purpose, it does not violate the provisions of Sections 34 and 39 of Article V, or Section 10 of Article XII, of the Constitution, respecting state moneys and the appropriation thereof. (*Barbour v. State Board of Education*, 92 Mont. 321, 13 Pac. (2d) 225; *State ex rel. Bickford v. Cook*, 17 Mont. 529, 43 Pac. 928.)"

This opinion was reaffirmed and the language of the Court was quoted in *State v. State Board of Education*, 97 Mont. 441, 449, 35 Pac. (2) 116.

Also in *Barbour v. State Board of Education*, 92 Mont. 321, 329, 13 Pac. (2) 225, the Court said:

"\* \* \* It is universally held that in such cases the future income can be used for anything which can be said to be an accomplishment of the particular purpose or the fulfillment

of the trust without a violation of any of the constitutional or statutory provisions to which our attention has been called."

Not until the close of the state's biennium is the surplus, if any, remaining in the fund to be turned over to the State Treasurer and revert to the state general fund. In the meantime, the fund must be devoted to the special purpose for which it is created, to wit: "To be used in support of the laboratory \* \* \* to cover the cost of making the test." No further appropriation is necessary as our Court has repeatedly said.

In appropriating \$2,500 for the grain laboratory (H. B. 140, Laws of 1939, p. 612), the legislature did not repeal Section 908, supra. This section still stands and expresses the policy and program of the state and the trust fund thereby established must be devoted to the purpose for which it is created, to wit: The testing of wheat for the farmers who pay the fee. As we have seen, no appropriation of a special fund is necessary. Unless this is true we have the absurd situation of the state either refusing to test wheat after the first six months have passed, in spite of the expressed will of the legislature which enacted the law in 1913, or collecting money from farmers for a special purpose and using it for another purpose. Either one is contrary to law. It was said in *Hoboken v. Phinney*, 29 N. J. L. 67, and reiterated in *Heston v. State Board of Education*, 98 Atl. 305, 89 N. J. L. 446:

"Upon general principles of law a fund raised for a special purpose and placed in the hands of an officer for such special purpose cannot lawfully be applied to any other. Any such other appropriation would be a violation of the trust and so contrary to law."

We think this expresses a sound principle of law. Since we think the legislature did not intend to take money from wheatgrowers for testing wheat and then use it for some other purpose, we need not consider the constitutional objections to such procedure except to say they seem to be insurmountable. As if to guard against such contingency, in case such fees should be available, the legislature added:

"In addition to the above appropriations there is hereby appropriated for each of the sub-stations, all federal funds and all other funds not mentioned above which pertain to the respective divisions."

It is indeed impossible to think that the legislature deliberately intended to terminate this program and to close the grain laboratory (which of course would result, since farmers would not be so foolish as to pay out fees for a service they could not obtain) when to do so would not save a single cent to the state.

It is therefore my opinion that all fees sent in by farmers for testing grain are available for the purpose and no other until the end of the state's biennium and that only then may the surplus be turned over to the State Treasurer and revert to the general fund and that all claims for such testing should be paid.

You also submit the question whether the proceeds of sale of animals raised for experimental purposes may be used by the Montana Experiment Station after the sum of \$17,475, special appropriation, has been expended.

We think the opinion expressed to you on November 9, 1939, is determinative of this question and that the same principles apply. In addition to the reasons heretofore given, we call attention to the following appropriation made by the 1939 legislature (H. B. 140, Laws of 1930, p. 612):

"In addition to the above appropriations there is hereby appropriated for the experimental station, all federal funds and all other funds not mentioned above which pertain to the experimental station."

See the citations in the opinion above mentioned. This question should be answered in the affirmative.