

Opinion No. 228.**Appropriations—Montana State University—Trust Funds—Federal Grants.**

HELD: Section 7 of House Bill 140, Laws of 1939, is applicable only to income received by taxation and fees appropriated and under the control of the legislature.

Said Section 7 of House Bill 140 does not prevent the construction of buildings on the grounds of the units of the University of Montana when such buildings are paid for by federal grants, income from impressed trusts or private donations.

April 18, 1940.

Montana State University
School of Forestry
Missoula, Montana

You have asked if the provisions of Section 7 of House Bill 140, Laws of 1939, operate to prevent the construction of buildings upon:

"1. The property of the Montana Forest and Conservation Experiment Station in the Blackfoot Valley acquired by deed in trust from the Anaconda Copper Mining Company dated October 29, 1937, from the Northern Pacific Railway Company by a similar deed, and other grantors;

"2. The property of the Biological Station of Montana State University established by special Act of Congress granting a tract of land on Flathead Lake for biological station purposes;

"3. The property of the Forest Tree Production Nursery of the Montana Forest and Conservation Experiment Station, situated immediately north of the University campus at Missoula;

"where the buildings will be constructed without use of funds appropriated by House Bill 140 but

on the contrary will be constructed solely from funds supplied by the Civilian Conservation Corps, the Works Progress Administration, other federal government sources, and outside donations."

Section 7 of House Bill 140, Laws of 1939, reads:

"It shall be expressly understood that no additional buildings shall be constructed, nor any funds pledged for this purpose during the next two years, notwithstanding the provisions of any existing laws."

The legislative intent in enacting this section was to prevent the expenditure of money received by taxation and fees on the construction of more buildings at the various units of the Greater University. That is, none of the money appropriated by House Bill 140, Laws of 1939, was to be used for construction of buildings.

The property of the Montana Forest and Conservation Experiment Station was granted to the State of Montana by the Anaconda Copper Mining Company under the following conditions contained in the deed of trust:

"* * * provided, however, that this conveyance is made in trust for the use and benefit of the Montana Forest and Conservation Experiment Station of the Forestry School, Montana State University, at Missoula, Montana, and this conveyance is made upon the express condition that the State Board of Education for and on behalf of the State of Montana, will accept said trust and that the land conveyed hereby shall be administered, managed and operated in accordance with the advice of the Dean of the Forestry School of Montana State University at Missoula, whoever may hold that office from time to time, in his capacity as the Director of said Montana Forest and Conservation Experiment Station of the Forestry School of Montana State University, and that all sales or leases of said land, or any portion thereof, or any of the products therefrom, shall be made only upon the advice and with the consent of said Dean of said Forestry School in his capacity as Director of said Montana Forest and Conservation Experiment Station,

and that all proceeds derived from such property, either from sale, or lease of the same, or any products thereof, shall be set aside for the exclusive use and benefit of said Forest and Conservation Experiment Station, in accordance with the directions of the said Dean of said Forestry School in his capacity as Director of said Forest and Conservation Experiment Station." (Emphasis ours.)

This deed was approved and accepted by the State Board of Education on December 1, 1937. Other property was granted by the Northern Pacific Railroad under similar conditions, approved and accepted by the Montana State Board of Education on July 10, 1939.

The proposal presented includes the construction of a building by the federal government paid for out of C. C. C. funds, in case any additional expenditure is necessary it will be made out of the trust funds established by the grantors in the deeds above quoted. Such funds are exclusively administered by the Director of the Station and are not subject to appropriation by the legislature or within the provisions of House Bill 140. I am of the opinion that Section 7 of House Bill 140 would not prevent the Director of the Experiment Station from entering into a contract for the construction of buildings paid for by federal funds and the trust funds created by the grantors.

The buildings to be constructed upon the Biological Station property on Flathead Lake are to be built by WPA labor. The sponsor's contribution for such a WPA project would be supplied from donations raised by individuals and organizations interested in the continuance of the work carried on by the Biological Station and increased and improved facilities for such work. Such a project would not require the expenditure of any money under the control of the legislature and appropriated by House Bill 140, Laws of 1939.

The construction at the Forest Nursery near the campus of the Montana State University will be accomplished by means of federal funds appropriated for shelterbelt and windbreak tree production. Here, as in the previous cases, there is no question of expending funds

appropriated by House Bill 140 or under the control of the legislature.

In all of these cases part of the money expended for construction is to come from agencies of the federal government, the WPA, the CCC fund, and the appropriation for shelterbelt tree production. In 1937 the legislature said, "It is hereby declared to be the public policy that the state and all political subdivisions thereof cooperate with any agency of the federal government in and for the construction, operation, and maintenance of any plans and projects in aid of which such federal agency is about to, or has, expended funds furnished by the federal government, intended for a useful purpose, and calculated to furnish employment and assistance to the needy citizens of this state." (Sec. 1, Chap. 85, L. 37). The act containing this declaration of public policy was continued and affirmed by the Twenty-sixth Legislative Assembly by Chapter 209, Laws of 1939. Such an affirmation of an intention to cooperate fully with the federal relief agency cannot be reconciled with Section 7 of House Bill 140 unless the application of said Section 7 is limited to tax money of the State of Montana appropriated by that bill.

It is my opinion that Section 7 of House Bill 140 is restricted in its application to the funds appropriated therein and in the present instance, where federal funds, donations and income from trust funds are involved, said Section 7 does not prevent the construction of the proposed buildings described above.