

Opinion No. 40.

**State Educational Institutions — State
Board of Education—Construction
New Buildings—House Bill 140,
Section 7, Laws of 1939.**

HELD: Section 7, H. B. 140, Laws of 1939, does not conflict with either Section 23, Article V or Section 11, Article XI of the Montana Constitution.

The State Board of Education has no powers or duties except those prescribed and regulated by law.

The general control and supervision of the State University and other state educational institutions vested in the State Board of Education must be within the powers of the board as fixed by the Legislature.

April 3, 1939.

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

Dear Dr. Swain:

You have submitted the following:

“House Bill No. 140 enacted by the Legislative Assembly at the recent session contained the following:

“‘Section 7. It shall be expressly understood that no additional building shall be constructed, nor any funds pledged for this purpose during the next two years, notwithstanding the provisions of any existing laws.’

“May I ask you whether this section in any way limits the power vested by Article XI, Section 11 of the Constitution in the State Board of Education to control the University of Montana. I realize, of course, that in making an appropriation the Legislative Assembly may appropriate money for certain specific purposes and refuse to make appropriations for other purposes. This section, however, makes no allusion to any appropriation and there is nothing in the title of the bill to indicate that it has any other purpose than that of the appropriation of money.

“My special reason for asking your opinion at this time is that notice has just been received of the approval of W. P. A. Project, No.

30412, in the amount of \$22,997, to be provided by the Federal Government to construct and reconstruct public buildings to be used for experimental purposes, living quarters for state employees, and storage space for state-owned property at the Northern Montana Branch Experiment Station, and it is desirable to know whether the possibility of accepting this offer of the Federal Government is destroyed by the section above mentioned."

House Bill 140 is the general appropriation bill for the state educational institutions. While Section 23, Article V of the Montana Constitution provides that no bill shall be passed containing more than one subject, an exception is made in the case of general appropriation bills. Moreover, the matter stated in Section 7, House Bill 140, is related to the general subject of educational institutions. It is a negation of power, whereas the several appropriations are an affirmation of power. The legislative will is expressed both affirmatively and negatively.

Section 11, Article XI of the Montana Constitution reads:

"The general control and supervision of the State University and the various other state educational institutions shall be vested in a state board of education, **whose powers and duties shall be prescribed and regulated by law. * * ***" (Under-scoring ours.)

While the State Board of Education has the general supervision and control of the State University and other state educational institutions, the powers and duties of the board are prescribed and regulated by law, that is, by statutes enacted by the Legislature. The powers and duties of the board are executive in nature, not legislative. The general control and supervision of the State University and the other state educational institutions vested in the State Board of Education must be within the powers given to the board by the Legislature, as expressed in the statute.

Since the Legislature has seen fit to withhold from the board the power to construct new buildings for the state educational institutions and to pledge

funds for this purpose, it is my opinion, based on the reasons stated, that Section 7, House Bill 140, does not conflict with either Section 23, Article V or Section 11, Article XI of the Montana Constitution.