

Opinion No. 70**Public Welfare—Funds—Transfer
Board of Examiners, Authority.**

HELD: Transfer of funds from one item to another under House Bills Nos. 419 and 427 may be made only by Board of Examiners.

May 25, 1939.

Mr. I. M. Brandjord, Director
State Department of Public Welfare
Helena, Montana

Dear Mr. Brandjord:

You have called my attention to an apparent conflict in the provisions of Chapter 129, Laws, 1939, and House Bills Nos. 419 and 427, Twenty-sixth Legislative Assembly.

Section V of Part VIII of Chapter 82, Laws, 1937, as amended by Chapter 129, Laws, 1939, provides that transfer of funds from one account to another may be made by the State Board of Public Welfare.

House Bills Nos. 419 and 427 of the Twenty-sixth Legislative Assembly, which are the appropriation bills for the interim period March 2, 1939, to June 30, 1939, and the biennium July 1, 1939, to June 30, 1941, provide that such transfers may be made by the State Board of Examiners.

House Bill No. 419 was approved on February 3, 1939, while House Bill No. 427 and Chapter 129 were approved on the same day, March 9, 1939.

Chapter 129 is a General Act amending various provisions of Chapter 82, Laws, 1937, the Public Welfare Act,

and deals with the general subject of Public Welfare. It is a statute effective from its passage until repealed or amended by a subsequent legislature. House Bills Nos. 419 and 427 are appropriation measures and in so far as the provision in question is concerned it is a special statute.

That there is a conflict in these provisions is apparent. We must therefore interpret the provisions in accordance with well established rules of statutory construction. Our Supreme Court, in the case of *Reagan v. Boyd*, 59 Mont. 453, at page 460, has expressed the rule in the following language:

"It is the rule of statutory construction in force in this state and generally elsewhere that, 'Where there is one statute dealing with a subject in general and comprehensive terms, and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible; but to the extent of any necessary repugnancy between them, the special will prevail over the general statute.'" (Citing *Stadler v. City of Helena*, 46 Mont. 128, 127 Pac. 454.)

Continuing the Court quotes the following rule:

"When the special statute is later, it will be regarded as an exception to or qualification of the prior general one." (Citing other Montana cases and cases from several other jurisdictions.)

The original enactment of Chapter 82, Laws of 1937, provided for such transfers to be made by the Board of Examiners. By the amendment of the original general statute, it is apparent the legislature intended to change this provision and transfer this authority from the Board of Examiners to the Board of Public Welfare, as a general proposition. However, the legislature must have had some purpose in view when, after it provided for this change by the general amending act (Chapter 129) it specifically provided that in so far as the expenditure of the money appropriated for these specific periods, such transfers were to be made by the Board of Examiners rather than the Board of Public Welfare. It is also worthy of note here that in both

House Bill Nos. 419 and 427 the legislature provided that no transfers were to be made from any other items of the appropriation to the account of the administrative costs.

The legislature, being the only body having authority to appropriate funds, may control the expenditure of such funds by providing the conditions under which such expenditures may be made. It has done so in this instance by providing in these two bills that in the expenditure of the funds of each particular item transfers may be made from one to the other "by the State Board of Examiners." If the legislature desired that as to these specific appropriations the right to transfer from one item to another should be governed by the general provision in the amendment to Chapter 82, it would not have included the specific provision here in issue. By omitting such specific provision, Chapter 129 would have governed. By like reasoning, however, we must conclude that by including this specific direction in the appropriation bills, the legislature meant that as to the period covered by such appropriations the general amendment would not apply.

It is therefore my opinion that no transfer of funds provided by House Bills Nos. 419 and 427 from one item to another may be made except by the State Board of Examiners.