

My dear Mr. Brandjord:

You have requested my opinion as to whether or not the sum of \$1,803.54 derived from the sale of containers in which surplus commodities were received will become a part of the state general fund if not expended on or before June 30, 1939.

In explanation of the source from which these funds were derived and the purposes for which to be used, you have submitted copy of letter addressed to the Governor, and copy of telegram from Mr. H. C. Albin, chief, purchasing and distribution section, Federal Surplus Commodities Corporation, which are as follows:

"Hon. Roy E. Ayers
"Helena, Montana

"Dear Governor Ayers:

"Due to unusual weather and growing conditions during the past year the Federal Surplus Commodities Corporation has purchased larger quantities of surplus agricultural commodities than in the past.

"Inasmuch as the corporation donates these commodities to state welfare agencies for distribution to relief families, this increased quantity of commodities has necessitated an expansion of the distribution facilities and an increase in the distribution costs of the states. The present agricultural situation indicates a continued surplus of several agricultural commodities which are suitable for relief use and which may require further purchases to relieve distressed conditions.

"Incidental to the donation of agricultural commodities to the states for relief purposes there is included the donation of the shipping containers in which the commodities are received which likewise may be used for relief purposes. In some instances all of these containers are not useful or needed in the intra-state distribution of the commodities to the families eligible to receive them. In such cases the Federal Surplus Commodities Corporation does not object to the state selling these containers if the proceeds from such sales are utilized for relief purposes.

"Heretofore the Federal Surplus Commodities Corporation has di-

Opinion No. 91.

Public Welfare—Funds—Federal Surplus Commodities Corporation.

HELD: Funds derived from sale of containers and donated to the State Department of Public Welfare do not revert to general fund of state if not used before end of fiscal year.

June 28, 1939.

Honorable I. M. Brandjord
Administrator, State Department
of Public Welfare
Helena, Montana

rected the use of the funds resulting from the sale of these containers in the furtherance of the general purchase and distribution program. However, in view of the increased problem of maintaining and developing adequate distribution facilities, it is believed that these funds may be employed to better advantage by the recipient states for local relief purposes by maintaining adequate intra-state distribution facilities for commodities donated to the state welfare agency, the Federal Surplus Commodities Corporation.

"It will therefore be appreciated if the State of Montana will provide the accounting, auditing and disbursing controls necessary to the proper handling of such containers and in the event the containers are sold, arrange for the proceeds therefrom to be employed by the state for meeting problems of intra-state surplus commodity distribution.

"This information is also being furnished to Mr. I. M. Brandjord, administrator, and Mr. Dwight Lohn, director of commodity distribution, Montana Department of Public Welfare, Ewing and 10th streets, Helena, Montana, with the request that they consult with the proper state officials in connection with this matter.

"Sincerely yours,

"J. W. TAPP, President."

"I. M. Brandjord
"Montana Dept. of Public Welfare
"515 North Ewing St.
"Helena, Mont.

"Reurtel Perkins 22nd permissible Montana Department Public Welfare expend eighteen hundred three dollars fifty-four cents derived from commodity distribution container sales for direct relief stop purchase of trucks for commodity division stop freight charges on intra state shipment commodities or any combination all three.

"H. C. ALBIN, Chief
Purchase and Distribution Section
Federal Surplus Commodities
Corp'n."

The section of our codes under which balances of appropriations are covered back into the general fund at

the end of the period for which appropriated is Section 304, Revised Codes of Montana, 1935, and reads as follows:

"All moneys now or hereafter appropriated for any specific purpose shall, after the expiration of the time for which so appropriated, be covered back into the several funds from which originally appropriated; provided, however, that any unexpended balance in any specific appropriation may be used for either of said years for which such appropriation has been made."

This section deals only with appropriations made by the Legislature of money derived from taxes. The funds in question were not derived from taxes, but on the contrary were a gift or donation from an agency of the Federal Government, made for a specific purpose. Strictly speaking, these funds are trust funds.

This office had a similar question presented under the old act creating the Montana Relief Commission and the emergency relief fund, (Chapter 109, Laws, 1935.) There the question was considered as to whether there was any necessity for the appropriation of moneys received from the United States Government for relief purposes and whether or not the action of the Legislature in attempting to appropriate, or its inaction in failing to appropriate, as the case may be, moneys received from the United States for such purposes has any effect whatever upon the distribution of the funds. In the opinion we there said:

"These funds are granted by the United States for a specific purpose. They cannot be used for any other purpose. They cannot be placed in the general fund of the state and used for the general support of state functions. They are trust funds in every sense of the word.

"If the state officers charged with their custody and disbursement should attempt to use them for any purpose other than the purpose mentioned in the Federal Emergency Relief Act of 1933, undoubtedly an action would lie to enjoin such unauthorized use.

"It is without doubt the correct and logical view that trust funds, even

though placed in the custody of the State Treasurer, are not state funds requiring an appropriation under the terms of the Constitution."

The question of the status of federal funds granted the state has been before our Supreme Court on several occasions, and the same ruling has been made. See,

State ex rel Bickford v. Cook, 17 Mont. 529;

State ex rel Dildine v. Collins, 21 Mont. 448;

State ex rel Koch v. Barret, 26 Mont. 62.

Were these funds covered back into the general fund by reason of the provisions of Section 304, Revised Codes of Montana, 1935, they would be used for purposes other than for which intended, and would therefore amount to an unauthorized use thereof.

The State Department of Public Welfare by Section VII (h), of Part I of the Welfare Act is designated "the agent of the Federal Government in public welfare matters of mutual concern in conformity with this Act and the Federal Social Security Act, and in the administration of federal funds granted to the state to aid in the purposes and functions of the state department."

These funds being trust funds, and the State Department being the designated agent of the Federal Government in the administration of federal funds granted to the state "to aid in the purposes and functions of the State Department," it follows that the State Department may administer such funds for the purposes for which granted, which purposes are specifically set forth in letter and telegram mention herein.

It is therefore my opinion that the funds in question will not revert to the state and become a part of the general fund if not expended on or before June 30, 1939, but such funds must be expended by the Department for the purposes for which they were designated.