

adding machines, calculating machines, desks, tables, chairs, and miscellaneous articles; that such equipment is now being used by the several county departments of public welfare on a loan basis from the State Department; that such of this equipment was purchased with federal funds turned over by the Civil Works Administration and Federal Emergency Administration, and some was purchased by the Federal Transient Service and turned over to the Montana Relief Commission. You further advise that this equipment is wearing out and should be replaced with new and that the county departments are requesting that the equipment in their possession be turned over to them so that they might trade it in for new equipment.

You ask opinion on the following questions:

1. Can the State department of Public Welfare sell any or all of this equipment to the several county welfare departments, at prices predetermined by the State Purchasing Agent?

2. Counties would be asked to pay for this out of poor funds. Is this the correct policy, or would the county have discretionary power to designate from which fund such payments are to be made?

3. If the State department of Public Welfare can make such sales as are referred to in paragraph 1 above, then can it use any funds received from such sales for the purchase of new equipment of the same kind during the same fiscal year in which sales are made?

This office has held in Opinion 190, Volume 17, Official Opinions of the Attorney General, that all property, both real and personal acquired by the State Department of Public Welfare in whatever manner, vests in the State of Montana, for the use and benefit of the department. This opinion also holds that all sales of real or personal property must be made through the State Purchasing Agent, as provided in Section 293.4, R. C. M., 1935.

Title to the property in question, when acquired by the department in the manner you indicate, became vested in the State of Montana, for the use and benefit of the department. Under the provisions of Section 293.4 supra,

Opinion No. 99

Public Welfare—State Board of Public Welfare—Property, Acquisition and Sale of Trust Funds.

HELD: 1. The State Board of Public Welfare may acquire both real and personal property by purchase, gift or condemnation, title to which will vest in the State of Montana for the use and benefit of the department.

2. The State Department of Public Welfare may sell any of its property not needed or being used, but such sale must be made through the State Purchasing Agent, as provided by law.

3. County departments of Public Welfare may purchase office furniture, fixtures, and equipment from the State Department, but the same must be paid for from the county poor fund.

4. Proceeds received by the State Department from the sale of property are trust funds and may be used for any purpose of the department at any time, regardless of fiscal periods.

July 17, 1939.

Mr. B. L. McFerran
Purchasing Agent
Department of Public Welfare
Helena, Montana

Dear Mr. McFerran:

You have advised that the department owns a considerable quantity of office equipment such as typewriters,

the State Purchasing Agent has authority to sell any property belonging to the state but not needed or used by any state institution or by any department of the state government. The property in question, I assume from the facts given, is not being used or needed by any state institution or department, and therefore may be sold in the manner indicated. There is no prohibition against the state selling any of its property to the several counties.

Therefore your first question must be answered in the affirmative.

Section X (b) of Part I, Chapter 82, Laws of 1937, as amended by Section 5, Chapter 129, Laws, 1939, provides that all administrative costs of the county departments, other than one-half the salary, mileage and expenses of the staff personnel attached to the county board, shall be paid from county poor fund. Undoubtedly, the cost of office furniture and equipment necessary for the ministration of the county departments is classified as administrative expense, and hence such costs under Section X, supra, must be paid from poor funds.

Section XIII, Part I, Chapter 82, Laws of 1937, authorizes the state board to acquire by purchase, exchange, or gift, or by condemnation, both real and personal property, and then provides,

"* * * Title to property purchased, or condemned or acquired in whatever manner, shall be taken in the name of the State of Montana for the use and benefit of the state department."

By the use of the words underlined, a trust has been created. Property acquired in the manner indicated in this statute is held by the state for a special purpose, to-wit, for the use and benefit of the State department of public welfare. Such property, therefore, being trust property, can be used for no purpose other than for which the trust was created. Proceeds received from the sale of such property have no different status than the property itself and would become trust funds to be used only for the purpose of the trust. Since the department may sell any property not needed or used, and since the department may also purchase or acquire by gift real and

personal property, it follows that the proceeds received from the sale of this property may be used for the purchase of other property needed for the purpose of the department. In fact, in view of the language of Section XIII, supra, quoted above, we may go further and say that such proceeds may be used for any purpose which will be for the benefit of the State department.

No part of the property in question was acquired from funds of the appropriation to the State department. Under Section 304, R. C. M., 1935, it is only the unexpended portion of appropriations which are covered back into the general fund of the state at the end of the biennium. These funds being no part of an appropriation would not be affected by the provisions of this statute. However, regardless of the provisions of Section 304, supra, it is my opinion that such funds would not so lapse, for the reason that by doing so the purpose of the trust created by Section XIII, supra, would be nullified. These funds, therefore, may be used for any purpose of the department without regard to fiscal periods.