No. 231

FUNDS—TRUST FUNDS

Held: 1. Trust funds may not be diverted to the general fund and mingled therewith, but must be kept separate and ear-marked for the purposes intended.

2. The legislature did not intend by Chapter 14, Laws of 1941, to divert trust funds to the general fund but rather that they be kept separate and ear-marked for purposes intended.

September 3, 1941.

State Board of Examiners
The Capitol
Helena, Montana

Gentlemen:

You have requested my opinion as to whether or not balances in the following funds transferred on July 1, 1941 to the respective funds, or reverted to the general fund, under the provisions of Chapter 14, Laws of 1941:

Fund No. 155—Forester Fire Protection Fund
Fund No. 156—Forester's Slash and Brush Disposal Fund
Fund No. 159—Nursing Education—State College
Fund No. 160—University Experiment Station
Fund No. 104-19—Forester's Clark-McNary Fund
Fund No. 161—State College Experiment Station
Fund No. 162—State College Grain Laboratory Fund

Chapter 14, Laws of 1941, commonly known as House Bill No. 10, was designed and has for its purpose the requirement that certain moneys and funds of the state be deposited in the general fund so that the same could be under the control of the legislature to make appropriations of specific amounts to be expended by the several boards, offices, departments, etc., of the State. In the act, the legislature has grouped under separate sections certain offices, boards, etc., and the funds relating to them which by statutory provisions were designated specifically for them.

Section 1 requires the deposit in the general fund of all moneys from the collection of automobile drivers' license fees, electric energy producers' license taxes, metalliferous mines license taxes, and many other license fees and taxes, with certain specific exceptions.

Section 2 requires the deposit in the general fund of all moneys collected or received by or paid over to the board of railroad commissioners, public service commission, state board of health, milk control board, state auditor, etc., and specifically includes in this section moneys collected or received by or paid over to the state forester "by way or on account of fees, licenses or for any other purposes . . . ," and then specifically provides such money paid or collected "on and after July 1, 1941 shall be paid over to the state treasurer who shall deposit the same to the credit of the general fund of the State."

Funds numbered 159 (Nursing Education, State College), 160 (University Experiment Station), 161 (State College Experiment Station), and 162 (State College Grain Laboratory Fund) are included—if at all—under Section 3 of the Act under the provision "All moneys received or collected . . . by all higher educational institutions . . ."

This office has held that the Agricultural Experiment Station, its subdivisions and the Extension Service are not included in the term "higher educational institutions." (See Opinion 8, Vol. 19, Official Opinions of Attorney General.) Therefore, under this ruling, these two activities would not be included in the provisions of Section 3, Chapter 14, supra. However, regardles of such holding, the funds of these activities would not be affected by Chapter 14 for the reasons we shall presently point out.

The Agricultural Experiment Station was established by act of the Legislature in 1893 and is now contained in the Revised Codes as Section 889 to Section 901 inclusive. It was established under and by virtue of tthe authority of an Act of Congress, and Section 891 provides that "the provisions, donations, and benefits contained in said act of Congress relating to agricultural experimental stations and agricultural colleges now in force and all acts supplementary thereto, or amendatory thereof, are by the State of Montana hereby accepted and adopted." And Section 894 provides, "Until otherwise provided by law an agricultural experiment station, now established at Bozeman . . . shall be the beneficiary of the funds in said act mentioned, **and shall use and disburse said funds only for the purposes and in the manner provided in said act.** The treasurer of the executive board of the agricultural college and agricultural experiment station . . . is hereby authorized to receive and shall be the custodian of said funds, and he shall account for said funds and make reports to the secretary of agriculture, as required by said act of Congress." Section 896 provides, "The president of the agricultural college . . . is hereby authorized to enter into all necessary agreements with the secretary of agriculture of the United States, relative to the receipt and expenditures of all moneys paid to the state of Montana, or to such agricultural college under the provisions of said act, and to receive and expend such money in accordance with the provisions of said act of Congress and the agreement so made with said secretary of agriculture." Section 897 provides the treasurer of the college shall have authority to receive from the treasurer of the State of Montana the cash appropriation received from the United States, and "such cash appropriation shall be expended by the executive board of said college, under the general supervision of the state board of education, **but only for the purpose for which the same is appropriated by Congress."**

The Grain Inspection Laboratory was established by Chapter 119, Laws of 1913, and provisions relating thereto are contained in the code under Sections 902 and 912, inclusive. It was established at the Montana agricultural experiment station for the study of the milling and baking quality of wheat raised in Montana, and for the study of the germinating capacity, quality and purity of field crop seeds grown and sold in the State of Montana. Under Section 906, the general supervision of the laboratory is placed in the director of the Montana agricultural experiment station. Section 908 provides for payment of certain fees by individuals requiring tests of seeds, then provides, **"Fees so collected are to be deposited in a fund in charge of the director of the experiment station, to be used in support of the laboratory.** Any surplus remaining in this fund at the close of the state's biennium shall be turned over to the state treasurer and shall revert to the state general fund." (See also Section 912 to same effect.)

Fund No. 159, Nursing Education, State College, is established under resolution of the State Board of Education in accordance with an agreement between the Montana State College and the Consolidated Deaconess School of Nursing. (See Items 8725 and 9522, Minutes of State Board of Education, dated respectively July 11, 1938, and July 8, 1940.) This fund is composed entirely of matriculation and registration fees paid by student nurses, and donations and contributions. These moneys are deposited with the state treasurer in a special fund designated "Department of Nursing Revolving Fund" and are used and expended entirely and solely for the expenses incurred in conducting the school and in other activities of the school. There is no statutory regulation of this activity at the State College, but its existence is recognized by the Legislature in the general appropriation bill for the higher educational institutions, House Bill 174, Laws of 1941, page 374, under the appropriation for the Montana State College, where it is provided, "In addition to the foregoing appropriations, all revenue received as fees or collections for the benefit of the department of nursing education shall be deposited with the state

treasurer **as a trust account and the entire amount is hereby appropriated solely for such purpose."**

The University Experiment Station was created and established at the forestry school by Chapter 141, Laws of 1937, under the title "Montana State Forest and Conservation Experiment Station." It is under the direction of the Dean of the Forestry School and the supervision of the State Board of Education. One of its purposes is to cooperate with other departments of the University of Montana, the State Forester, State Board of Land Commissioners, Fish and Game Commission, etc., with private institutions and agencies, and with the United States Government and its branches as a land grant institution, or otherwise in accordance with their regulations. It is maintained principally by legislative appropriation. In addition to the appropriations, the station derives certain fees for services and grants from the Federal Government for specific purposes.

From a study of the history of the activities for which each of the above funds have been established, it is clear, in each instance, the money going into the fund is for a special purpose. In the instances where the legislature has recognized these activities and provided for the source of the funds, it has specifically provided such funds shall be used only for the purposes designated. It is clear, therefore, in each instance, the fund is a trust fund. Corpus Juris defines a trust fund as "a fund held by a trustee for the specific purposes of the trust." (65 C. J. 217). If by Chapter 14, supra, the legislature intended to divert these trust funds into the general fund of the state, the question would then arise as to its authority to do so.

The Supreme Court of the State of North Dakota in the case of Brye v. Dale, reported in 250 N. W. 99, in speaking on this subject, said:

> "If the disposition of the revenue is fixed by the constitution or by a statutory law, it is beyond the power of the legislature to divert the fund."

And in the State of Washington, the legislature passed an appropriation act appropriating from the Workmans' Compensation "accident fund" a sum in settlement of a claim for injuries. In the case of State v. Yelle, 25 Pac. (2nd) 569, a writ of mandamus was sought to compel the auditor to pay the sum so appropriated on a claim presented. The court, in denying the writ, said at page 570 of the report:

> "These funds are therefore trust funds drawn from particular sources and devoted to special purposes. By the act itself, the fund is impressed with a trust. . . . These funds are therefore not subject to appropriation by the Legislature for purposes other than those contemplated by the act, nor by methods that run counter to the effective operation of the act."

And again at page 571, in discussing the intention of the legislature, the court said:

> "It certainly cannot be said that, in passing the appropriation act, the Legislature intended to repeal the provisions of the Workman's Compensation Act relative to the disbursement of the trust funds therein set up. All legislation bearing upon that subject has been progressively consistent with the view of upholding and maintaining that act and the administrative method provided therein. That method and that procedure are exclusive and remain so until lawfully repealed either expressly or by such implication as makes its repeal necessary."

The funds designated in your request which pertain to the State Forester are Fund No. 155, Forester Fire Protection; Fund No. 156, Forester's Slash and Brush disposal Fund; and Fund No. 104-19 Forester's Clark-McNary Fund. These three funds are grouped under the fund created by Section 1830.10 and designated "Forester's cooperative work fund." Section 1830.9 authorizes the state forester to cooperate with forest owners

and farmers in the development and protection of state and privately owned forest lands, plantations and shelter belts and brush disposal areas within the state. Section 1830.10 authorizes the state treasurer to receive moneys that may be appropriated or alloted for the purposes named in Section 1830.9 by the state, counties, municipalities, the United States Government or any department thereof, or other organization or individual, and directs him to "deposit such moneys in a special fund to be known as the forester's cooperative work fund," and directs the auditor "to draw warrants for payments from said fund **for the purposes aforesaid . . .**" It will be seen therefore that the money coming into this fund is directed specifically to be used only for the purposes mentioned in Section 1830.9. Such purposes are special and such fund is a special fund and the moneys therein are for a special purpose or purposes and hence are **trust funds.**

Conceding, however, that the Legislature had the authority to divert these trust funds to the general fund, a reading of Chapter 14 in conjunction with House Bill 174, the appropriation for educational institutions, and House Bill 380, the General Appropriation Act for Boards and Departments, it is clear it did not intend these specific funds should be transferred to the general fund and mingled therewith. Regardless of the provisions of the act that these moneys are directed to be paid over to the state treasurer who shall deposit the same to the credit of the general fund of the state, under the appropriation acts above referred to we find—in each instance where these funds are involved—specific language appropriating such funds for the purposes intended.

Under House Bill 174, after appropriating for the Montana State University at Missoula from the general fund and the millage fund, we find the following language (Page 373, Laws of 1941):

> "In addition to the foregoing appropriations, all earnings of the experiment station of said state university, and also, all federal funds allotted or accruing thereto, shall be set aside in a special fund and are hereby appropriated to the said experiment station."

And under the appropriation for the Montana State College Experiment Station, we find the following language (Page 374, Laws of 1941):

> "All moneys collected by the experiment station and animal husbandry department shall be set aside in a special fund, from which fund there is hereby appropriated for the use of the Montana agricultural experiment station so much thereof as may be necessary for the payment of salaries and expenses.
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> "In addition to the above appropriations, there is hereby appropriated for the Montana agricultural experiment station, all federal funds and also all trust funds."

And under the appropriation for the Montana State College, we find the following language (Page 374):

> "In addition to the above appropriations, there is hereby appropriated for the support and maintenance of the Montana state college (however described), all income from all land grants and all endowments, and all federal funds, and also all trust funds.
>
> "In addition to the foregoing appropriations, all revenue received as fees or collections for the benefit of the department of nursing education shall be deposited with the state treasurer as a trust account and the entire amount is hereby appropriated solely for such purposes."

And under the appropration for the Extension Service of the State College, we find the following language (Page 375):

> "In addition to each of the above appropriations, there is hereby also appropriated for the extension service, all federal funds and all trust funds."

And like language is found under all other appropriations contained in House Bill 174.

And in House Bill 180, under the appropriation for the State Forester, we find the following language (Page 413, Laws of 1941):

> "In addition to appropriations, there is hereby appropriated all moneys received as trust funds for the purposes for which they were provided; provided, however, no administrative salaries shall be increased by reason of use of the trust fund."

Thus, it may be seen that, although by the language of the act itself it may appear these trust funds were intended to be diverted to the general fund, it is apparent the legislature did not intend such a result.

This question was considered quite fully by the Supreme Court of the State of Washington in the case of State ex rel. Johnson et al. v. Clausen, 99 Pac. 743. In that state, at the time of the decision, there was established an institution designated as "Agricultural College Experiment Station and School of Science of the State."

The law was enacted in conformity with the Act of Congress under which the Montana act was adopted. Funds for the institution were derived mainly from federal grants, fees and appropriations of the legislature. The Washington act provided the treasurer of the board of regents of the college be the financial officer and disbursements from the fund were left with the board or regents. Subsequently the legislature of Washington passed a law making it the duty of "each state officer or other person (other than county treasurers) who is authorized by law to collect or receive moneys belonging to the state or to any department or institution thereof, to transmit to the treasurer of the state each day, all moneys collected the preceding day. . . ." In accordance with his interpretation of the act, the treasurer of the board transmitted certain moneys collected by him to the treasurer. Thereafter it became necessary to use these funds for certain improvements and to pay running expenses. Demand was made on the state auditor to issue warrants against such fund which was refused and demand was made on the treasurer to pay, which he refused unless a warrant was drawn by the auditor. The refusal was based upon the provisions of the act hereinabove referred to requiring all state officers to transmit money collected to the treasurer. In State ex rel. Johnson v. Clausen case, supra, 99 Pac. 743, mandamus was brought against the auditor to compel him to draw his warrant against this fund. The auditor invoked the provisions of the act referred to as authority for his refusal. In granting the writ, the court, after reviewing the act creating the state college experiment station and the act requiring deposit of all state finances with the treasurer, said:

> "A reading of this act in connection with the then existing laws heretofore quoted makes it apparent that the Legislature did not intend by this general language to reach out and include the fund in controversy. . . . The act under consideration evidently contemplated that the money of the state arising from such sources as taxation and the sale of state lands, subject to the exceptions noted in the act, were the finances for which it provided. It does not purport to take from the board 'the management of the state college and experiment station, the care and preservation of all property of which such insitution shall become possessed, and the disbursement and expenditure of all money' . . . Neither does this act by its terms take from the treasurer of the board the duty to make 'disbursements of the funds in his hands on the order of the board,' when properly countersigned. The law offers no substitute for these provisions, nor does it in either letter or spirit relieve the board and treasurer, or either, of the duties theretofore imposed. If construed to mean state finances strictissimi juris, it leaves the officers in position to carry forward the object of their trusteeship. If given any other construction, it burdens them with all their former duties, but takes from them the means of efficient performance."

If we may admit the legislature intended to divert these funds, we must doubt their right to do so.

In the case of State v. Pape, 103 Wash. 319, 174 Pac. 468, 469, in considering a similar question with reference to funds derived under a state forestry law similar to ours and in passing upon the question as to whether or not such funds were public funds and as such coming within the constitutional provisions similar to ours to the effect that "all taxes levied and collected for state purposes shall be be paid in money only into the state treasury," and "no moneys shall ever be paid out of the treasury of this state or any of its funds or any of the funds under its management, except in pursuance of an appropriation by law . . ." (See Section 34, Article V of our Constitution), the Court said:

> "They are, under the provisions of the act, to be obtained from forest land owners to protect against fires, and forest land owners under the act are given the privilege of protecting their own lands and of forming cooperative protective agencies to protect their lands from fire, and, if they fail so to protect their lands adequately, the state forester is required to provide such protection at a cost of not to exceed five cents per acre per annum . . . These disbursements so made by the state forester are made for and on behalf of the private forest land owners, for their special benefit as well as incidentally for the general benefit of the whole public. The disbursements are required to be laid, if not paid, upon the lands benefited, and collected by the taxing officers. **But this arrangement does not necessarily make the assessment taxation, or the funds when collected public funds.** . . . These funds were not taxes levied and collected for state purposes generally but were assessments levied upon private lands particularly for the benefits done these private lands. It was not necessary, therefore, that the sums imposed and collected should come into the state treasury as provided by Article 7, Section 6. (Of the Washington Constitution.) Citing cases from Pennsylvania and Minnesota holding to the same effect under similar constitutional provisions."

The Supreme Court of our state passed upon a similar question in the case of State v. Wright, 17 Mont. 565, 44 Pac. 89. This action involved funds derived under the provisions of the then existing state arid land act, Sec. 3530 et seq. of the Pol. Code of 1895. This act was passed in pursuance to an Act of Congress relating to the reclamation of arid lands and the sale thereof by the state. Funds derived from such sales are placed in the state treasury in a fund designated "Federal Grant Reclamation Fund." The state treasurer refused to register warrants drawn against this fund by the commission, basing his refusal on the ground it would be a violation of Section 34 of Article V of the state Constitution. The court, in passing upon this question, after reviewing the act, said at page 571 of the report:

> "Eliminating from the case the appropriation of $1,000 heretofore referred to, we regard this Federal Grant Reclamation Fund as impressed with a trust under the act of congress. The state cannot make it a fund of its own, to be dealt with as may be state funds contemplated by the constitution. No control can be exercised over it, beyond such as consistent with the Act of Congress in the execution of the trust, which is to aid the state in the reclamation of desert lands, and the settlement, cultivation, and sale thereof in small tracts to actual settlers. The power of the state is limited to the acceptance of the offer of the United States, and the execution of the trust assumed by the acceptance thereof. The officers of the state are but agents designated by the law of the state to carry out the legislative will. They do not (except in the disbursement of the $1,000 in legitimate claims against such appropriation for limited purposes) act in any capacity other than as agents to carry out the offer of congress

through the enabling act of the state. . . . The trust relationship must continue over the funds. The treasurer, therefore, is not prevented by the constitutional clause cited—which has reference to state funds—from registering the relator's warrants as required by the law, without regard to any action being had by the auditor or the state board of examiners."

For the same effect, see the case of Daugherty et al. v. Riley et al., 34 Pac. (2nd) 1005 (Cal.), where the authorities are quite fully discussed.

When we consider all these acts, establishing these several activities, together with the provisions of Chapter 14, and the appropriation acts above referred to, keeping in mind the purposes of Chapter 14, it can hardly be said the legislature intended by Chapter 14 to repeal any of said acts or to make them ineffective in operation. It was not necessary to do so in order to give full effect to Chapter 14. These acts may all be read together and each given effect.

"Statutes which are in pari materia must be construed together, all parts thereof being given effect if possible."

Box v. Duncan, 98 Mont. 216, 38 Pac. (2nd) 986.

"Statutes which are not inconsistent with one another, and which relate to the same subject matter, are in pari materia and should be construed together."

Register Life Ins. Co. v. Kenniston, 99 Mont. 191, 43 Pac. (2nd) 251.

We are not unmindful of the holding in Opinion No. 36, Volume 19. However, at the time said opinion was written, this office was not in possession of all pertinent facts which are now considered herein. Therefore, insofar as Opinion No. 36 conflicts herewith, it is to that extent overruled.

It is, therefore, my opinion the funds above mentioned are funds derived and created for special purposes, and hence trust funds, which are not affected by the provisions of Chapter 14, Laws of 1941, in that they may not be diverted and mingled with the general fund and their identity lost—but such funds must be kept separate and ear-marked and used only for the purposes for which created.

Sincerely yours,

JOHN W. BONNER
Attorney General