

No. 261

TEACHERS' RETIREMENT SYSTEM—STATE CONSTITUTION—APPROPRIATION BILL

Held: Section 5 of Substitute House Bill No. 46 does not comply with Section 23 of Article V of our State Constitution, and therefore is void.

October 8, 1941.

Miss Elizabeth Ireland
State Superintendent of Public Instruction
Capitol Building
Helena, Montana

Dear Miss Ireland:

You have submitted the following question:

Does Section 5 of Substitute House Bill No. 46, being a special appropriation bill prevent the payment to a teacher member of the Teachers' Retirement System of his pension and payments thereunder, where he is eligible in every other respect but is holding a position of public trust and receiving pay from any county, state or federal funds?

In answering your question, it is well to set forth Substitute House Bill No. 46, which is as follows:

"An Act to appropriate money for the Pension Accumulation Fund and the Expense Fund of the Teachers' Retirement System of the State of Montana, for the period beginning July 1, 1941, and ending June 30, 1943; and Providing That the Appropriation for the Pension Accumulation Fund Shall Not Be Deemed a Determination of the Normal or Deficiency Contributions by the State.

"Be it enacted by the Legislative Assembly of the State of Montana:

"Section 1. That the following sums be, and the same are hereby appropriated, out of any moneys in the state treasury, not otherwise appropriated, for the objects and purposes hereinafter expressed for the period beginning July 1, 1942, and ending June 30, 1943

**"THE TEACHERS' RETIREMENT SYSTEM OF THE STATE
OF MONTANA
FROM THE GENERAL FUND**

"Contribution of the State to the pension accumulation fund,
one hundred thousand dollars.....\$100,000.00
"For the expense fund, four thousand dollars.....\$ 4,000.00

"Section 2. That the following sums be, and the same are hereby appropriated, out of any moneys in the state treasury not otherwise appropriated, for the objects and purposes hereinafter expressed for the period beginning July 1, 1942, and ending June 30, 1943

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"Section 3. The amounts herein appropriated for the pension accumulation fund shall not be deemed to be a determination of the normal or deficiency contribution by the State under Section 8 of Chapter 87 of the laws of 1937, as amended by Chapter 202 of the laws of 1939.

"Section 4. Appropriations hereinbefore provided for shall be deemed and held valid notwithstanding the provisions of the budget act.

"Section 5. Any teacher holding any position of public trust and receiving pay from any county, state, or federal funds, shall not be eligible to receive teachers' pensions during the time so employed."

It will be noted this act is a special appropriation bill as expressed in its title and the act itself follows the title of the bill in Sections 1 to 4, both inclusive. Section 5 of the act has no relation to the other sections thereof nor to the title of the act nor to the subject of the act, and the title of the act does not make any reference whatever to the contents or matters set forth in Section 5.

As this act is a special appropriation bill for a particular purpose, it follows this act comes within the provisions and limitations of Section 23 of Article V of our State Constitution, which declares:

"No bill, except general appropriation bills, and bills for the codification and general revision of the laws, shall be passed containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed."

Our Supreme Court has had under consideration the above Section 23 of Article V of our State Constitution on numerous occasions. In *State ex rel. Foot, Attorney General, v. Burr et al.*, 73 Mont. 586, 238 Pac. 585, the Court stated:

"... The purposes of this limitation have been declared so often that any extended discussion of the subject at this time would be a work of supererogation. Stated briefly, those purposes are to restrict the legislature to the enactment of laws the subjects of which are made known to lawmakers and to the public, to the end that any one interested may follow intelligently the course of pending bills; to prevent the legislators and the people generally being misled by false or deceptive titles, and to guard against the fraud which might result from incorporating in the body of a bill provisions foreign to its general purpose and concerning which no information is given by the title. (*State v. Anaconda Copper-Mining Co.*, 23 Mont. 498, 59 Pac. 854; *State v. McKinney*, 29 Mont. 375, 1 Ann. Cas. 579, 74 Pac. 1095; *Yegen v. Board of County Comm'rs.*, 34 Mont. 79, 85 Pac. 740; *State v. Hopkins*, 54 Mont. 52, Ann. Cas. 1918D, 956, 166 Pac. 304.)

"The language of the Constitution is too plain to admit of doubt as to its meaning. It means just what it says: The title of a bill must express clearly the subject treated in the body of the bill. . . ."

Again our Supreme Court in *Hale et al. v. Belgrade Co., Ltd., et al.*, 74 Mont. 308, 240 Pac. 371, in considering the same constitutional provision stated:

"... Titles to legislative Acts, however, have recently, in some states, come to possess very great importance, by reason of constitutional provisions, which not only require that they shall correctly indicate the purpose of the law, but which absolutely make the title to control, and exclude everything from effect and operation at law which is incorporated in the body of the Act, but is not within the purpose indicated in the title. . . ."

It will be seen our Supreme Court has guarded jealously this provision of the Constitution, so that interested citizens following the progress of legislation through the legislative halls may be advised by the title of an act as to its provisions and subject matter, as well as the legislators who must depend on the title of acts to advise them of the contents and

provisions of pending bills. This provision guards them against false or deceptive titles and fraud in inserting a slumbering provision in the body of the bill, which would change the whole intent and purpose of the act as expressed in its title.

For the reason Section 5 of Substitute House Bill No. 46 of the Laws of 1941, approved March 12, 1941, is foreign to the rest of the bill, and is a different subject, and the provisions of Section 5 of said bill are not expressed in the title thereof nor referred to in any way, it is manifest and it is my opinion that said Section 5 of Substitute House Bill No. 46 does not comply with Section 23 of Article V of our State Constitution and therefore is void.

There are other constitutional provisions which might be urged, as for example Section 11 of Article II, Constitution of Montana, which provides in part that no law impairing the obligation of contracts shall be passed by the legislature. However, in my opinion the constitutional limitation I have specifically discussed herein is fatal to the said section.

Sincerely yours,

JOHN W. BONNER
Attorney General