

No. 342

GRAND ARMY OF THE REPUBLIC—SPANISH-AMERICAN WAR VETERANS—CUSTODIAN OF RECORDS—GOVERNOR, power of to abolish an office—MILITARY—VETERANS—WAR VETERANS

Held: The language used by the legislature in Chapter 56, Laws of 1941, is plain, certain and without any ambiguity, in that said act confers no authority or power on the Governor of Montana to abolish the office or position of custodian of the Grand Army of the Republic and the Spanish-American War Veterans Department of Montana, or any constitutional or statutory office, and Chapter 30 of Volume 1, Revised Codes of Montana, 1935, is still in full force and effect.

January 9, 1942.

Honorable Sam C. Ford
Governor of the State of Montana
Capitol Building
Helena, Montana

Dear Governor Ford:

I have received many inquiries and a request from the County Attorney of Custer County as follows:

“Does the Governor of the State of Montana have the authority and power to **abolish the office** of ‘Custodian of Records of Grand Army of Republic and United Spanish War Veterans’ upon the Governor’s approval of a report and recommendation of the advisory committee provided for in Chapter 56, Laws of 1941, commonly known as the State Government Reorganization Act?”

Inasmuch as this inquiry pertains to your office and I am under the statutes your legal adviser, I deem it only proper to direct this opinion to you.

In answering this question it will be necessary to examine the legislation relative to the creation of the office or position of custodian of records of the Grand Army of the Republic and the United Spanish War Veterans, as well as Chapter 65, Laws of 1941, the constitutional provisions applicable thereto, and the theory and application of the division of powers under our democratic form of government. This I will do in the same chronological order.

Section 320, Revised Codes of Montana, 1935, was enacted by our legislature as Chapter 76, Laws of 1903. This act directed the Governor and Secretary of State set apart a suitable room in the Capitol Building of the State of Montana for the storage and safe keeping of the archives and records of the Grand Army of the Republic.

The above act was carried forward in the Revised Codes of Montana, 1907, as Section 270.

The legislature, by Chapter 32, Laws of 1913, amended Section 270, Revised Codes of Montana, 1907, by providing for a custodian to be appointed by the Commander of the Department of Montana of the Grand Army of the Republic and by adding thereto three new sections, Section 4 thereof, providing for the expense of collecting and maintaining the exhibits of relics and mementos and the salary of the custodian in a sum not to exceed \$1200.00.

By Chapter 97, Laws of 1915, the legislature repealed Section 270, Revised Codes of Montana, 1907, and Chapter 32, Laws of 1913, and directed the Governor of the State of Montana to appoint a custodian of the records, mementos, relics, documents and archives of the Grand Army of the Republic, and history of the residents of Montana who served in the armed forces of the Civil War; the act also directed the Governor and Secretary of State to set apart a suitable room in the Capitol Building for the storing and safe keeping of such records. The act also provided for the expense of collecting and maintaining the exhibits, including the salary of the custodian, not to exceed \$1200.00 in any one year, which shall be paid by the state treasurer in the same manner as other salaries of state officers are paid. This Chapter 97, Laws of 1915, was carried forward as Chapter 23, Volume 1, Revised Codes of Montana, 1921.

The legislature, by Chapter 96, Laws of 1927, again amended Chapter 23, Revised Codes of Montana, 1921, by including therein with the Grand Army of the Republic, Department of Montana, the United Spanish War Veterans, Department of Montana. Said Chapter 96, Laws of 1927, was carried forward in the Revised Codes of Montana, 1935, as Chapter 30, which chapter is composed of Sections 320 to 324, inclusive.

Section 320, Revised Codes of Montana, 1935, provides:

"The governor of the state of Montana is hereby authorized and directed to appoint a custodian of the records, mementoes, relics, documents, and archives of the Grand Army of the Republic, and the United Spanish War Veterans and history of the residents of the state of Montana who served in the army, navy or marine corps of the United States during the civil war or during the Spanish-American war. The department commander, department of Montana of the Grand Army of the Republic or department commander of the United Spanish War Veterans, department of Montana, may recommend to the governor a suitable person to be appointed as such custodian, provided that the person appointed as such custodian must be a member of the Grand Army of the Republic of the department of Montana or of the United Spanish War Veterans, department of Montana."

Section 321, Revised Codes of Montana, 1935, provides:

"The governor and secretary of state are hereby authorized and directed to set apart a suitable room in the capitol building of the state of Montana for the storing and safekeeping of such archives,

records, etc., of the Grand Army of the Republic and United Spanish War Veterans, and said room shall be suitably furnished, and shall be under the charge of the custodian so appointed."

Section 324, Revised Codes of Montana, 1935, provides:

"The expense of collecting and maintaining such exhibits, including the salary of the custodian herein provided, shall not exceed the sum of twelve hundred dollars (\$1200.00), in any one year, which shall be paid by the state treasurer in the same manner as other expenses and salaries of the state department and employees or officers are paid."

Thus it will be noted the legislature, over a long period of years, has adopted a policy of state to protect, conserve and perpetuate the records, mementos, relics, documents, archives and history of the residents of the State of Montana who served in the armed forces of the United States during the Civil War and the Spanish-American War, so that their deeds of valor and patriotic devotion to our country would remain a living example of unselfish sacrifice to the coming generations, and so that in times of grave national peril, like the present, we of a younger generation may be inspired by the knowledge and example of our progenitors' heroic endeavors for the common cause; thus it created national tradition, unity and patriotism.

Section 320, Revised Codes of Montana, 1935, is a mandate to the Governor of Montana by the legislature to appoint a custodian of the records, mementos, relics, documents and archives of the Grand Army of the Republic, and the United Spanish War Veterans.

Section 321, Revised Codes of Montana, 1935, is a mandate to the Governor and Secretary of State of Montana to set apart a suitable room in the Capitol Building of the State of Montana for the storing and safe-keeping of such records, to be under the charge of the custodian so appointed.

Section 323, Revised Codes of Montana, 1935, provides:

"All books, records, papers, relics, mementos, and histories, and other effects of whatever nature applying to the department of the Grand Army of the Republic, or United Spanish War Veterans, and accorded space in this room, shall, whenever such department ceases to exist as a department of the Grand Army of the Republic, or United Spanish War Veterans, become the property of the state of Montana."

It will be further noted the legislature has made suitable provisions by appropriations, over the years, for the salary of such custodian, the last appropriation being in House Bill No. 380 at pages 409 and 421, Session Laws of 1941.

From the foregoing it is apparent the intent of the legislature was to maintain and perpetuate the office of custodian of the records, mementos, relics, documents, archives and history of the veterans of the Civil War and the Spanish-American War who were residents of Montana, and to perpetuate such inclusive records for coming generations, by express mandate. Obviously the Governor of Montana under Chapter 30, Volume 1, Revised Codes of Montana, 1935, has no alternative other than to appoint a custodian of such records; and it is equally apparent the Governor and Secretary of State are required to set apart a suitable room in the Capitol Building of the State of Montana for the safe-keeping of such records, said room to be under the charge of such appointed custodian, unless the legislature has repealed or amended Sections 320 and 321, Revised Codes of Montana, 1935.

I will now examine the pertinent parts of Chapter 56, Laws of 1941, the title to which reads in part as follows:

“ . . . Authorizing the Governor, With the Advice of the Advisory Committee, to Adopt and Put Into Effect any Recommendation or Recommendations Contained in any Report, When Approved by Him, and When no Legislative Action is Necessary Therefor; . . . ” (Emphasis mine.)

The only section in Chapter 56, Laws of 1941, pertaining to this question is Section 6, which is as follows:

“If the governor shall approve of any recommendation or recommendations contained in any such report regarding any change or changes in the keeping of the financial or other records, or the abolishment of any thereof, or the keeping of additional records by any office, bureau, board, commission, department or institution, or any changes in administrative procedure, and no legislative action is required to carry such recommendation into effect, the governor, with the advice of the advisory committee, may, by an executive order or orders, place such recommendations into full force and effect and require compliance therewith by the office, bureau, board, commission, department or institution to which such order or orders may be directed.” (Emphasis mine.)

It will be observed that, in Section 4 of Chapter 56, Laws of 1941, it is provided the person or persons appointed to make such study of the government of Montana shall make such reports from time to time as the Governor may direct, which reports shall:

1. Show the results of such study, and the possible improvements disclosed thereby.
2. Recommend changes in keeping financial and other records, the abolishment of any thereof, or the keeping of additional records.
3. Recommend the abolishment, reorganization or consolidation of offices, bureaus, boards, commissions, departments or institutions which may be deemed necessary.

It will be discerned the only authority and power granted to the Governor, under Section 6 of Chapter 56, Laws of 1941, supra, is that if the Governor approves any recommendation or recommendations contained in a report from the person or persons appointed to make a study of the government of the State of Montana regarding any change or changes in the keeping of the financial or other records or the abolishment of such records or the keeping of additional records by any office, bureau, board, commission, department or institution, or any changes in administrative procedure, and no legislative action is required to carry such recommendations into effect then—with the advice of his advisory committee—the Governor may, by executive order or orders, place such recommendations into full force and effect and require compliance therewith by the office, bureau, board, commission, department or institution. This authority extends, however, only to financial or other records or to any changes in administrative procedure of an office, bureau, board, commission, department or institution.

Section 7, Chapter 56, Laws of 1941, provides as follows:

“From the reports made to him regarding such study the governor shall, with the advice of the advisory committee, make and submit to the twenty-eighth legislative assembly

“(1) A full and complete report which shall contain the facts and matters set forth and contained in such reports together with such recommendations as such reports may contain;

“(2) A report of any executive order or orders, with regard to any of such recommendations which he has made, if any, and he shall set out copies of such orders in his report; and

"(3) Such recommendations, to the twenty-eighth legislative assembly, regarding such study and report, as he may deem proper."

There is no language or intent expressed in Chapter 56, Laws of 1941, attempting to delegate any authority or power to the Governor of Montana authorizing him with or without the advice of the advisory committee to abolish any office, bureau, board, commission, department or institution of the state, nor could the legislature so delegate such legislative power.

Section 1, Article IV of our State Constitution, provides:

"The powers of the government of this state are divided into three distinct departments: The legislative, executive, and judicial, and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any powers properly belonging to either of the others, except as in this constitution expressly directed or permitted."

"The theory of constitution section 1, Article IV, dividing powers of government into three co-ordinated branches, effects an absolute separation of the legislative, executive and judicial departments."

State v. Johnson, 75 Mont. 240, 243 Pac. 1073.

"Legislature has no power to create board composed of executive officers of state and delegate legislative duties thereto."

People v. Parks, 58 Cal. 623.

Where the legislature by an act has created a civil office which does not impinge on the constitution, as in Chapter 30, Revised Codes of Montana, 1935, that is, the office of custodian of the records, etc., of the Grand Army of the Republic and the Spanish-American War Veterans, the only power that can abolish such office is the legislature by appropriate act.

"In construing a statute, legislative intention controls and such intention is determined from language employed."

McNair v. School District No. 1, 87 Mont. 423, 288 Pac. 188.

It is therefore my opinion the language used by the legislature in Chapter 56, Laws of 1941, is plain, certain and without any ambiguity, in that said act confers no authority or power on the Governor of Montana to abolish the office or position of custodian of the Grand Army of the Republic and the Spanish-American War Veterans, Department of Montana, or any constitutional or statutory office and Chapter 30 of Volume 1, Revised Codes of Montana, 1935, is still in full force and effect.

Sincerely yours,

JOHN W. BONNER
Attorney General