No. 8

EXTENSION SERVICE—EXPERIMENT STATION—"HIGHER EDUCATIONAL INSTITUTIONS"—APPROPRIATIONS

Held: 1. The Agricultural Experiment Station, its substations and the Extension Service are not included in the term "higher educational institutions."
2. Income on earnings of state institutions may be validly appropriated without specifically naming the amount.

January 25, 1941.

Honorable O. J. Armstrong
House of Representatives
State Capitol
Helena, Montana

Dear Mr. Armstrong:

You have submitted to me a copy of House Bill No. 10, together with a copy of a letter dated March 28 from the Experiment Station, addressed

to one of your colleagues, and requested my opinion in the following matters:

"Please refer to attached copy of House Bill No. 10:

"Under Section 3, we used the term 'All higher educational institutions.' I would like to ask whether or not in your opinion this would include Montana Experimental Service and Montana Extension Service, both of which are conducted under the supervision of the State College of Agriculture.

"Also, please refer to appropriation bill for the 26th legislative session and also the 25th, particularly that portion relating to the services mentioned under the last part of the paragraph above.

"Should House Bill No. 10 become law, would it be permissable to appropriate 'all earnings' as was done at the preceding session? Or would it be compelled to appropriate a specific amount from earnings as was done by other sessions?"

Referring to the questions you have set forth in their respective order, the term "higher institutions of learning," similar to the term "higher educational institutions" which you employ in Section 3 of House Bill No. 10, has been judicially defined as:

"major institutions of learning, statewide in their operation, which are maintained by general taxation . . . "

McHenry v. Ouachita Parish School Board, 169 La. 646, 125 So. 841.

Our Supreme Court has ruled that the Experiment Station and Extension Service are not parts of Montana State College, our Agricultural College, and do not constitute component parts of the University of Montana, or as it is generally referred to, the "Greater University."

State ex. rel Jones v. Erickson, 75 Mont. 429, 244 Pac. 287.

It was likewise held that the Extension Service and Experiment Station were not "departments thereafter organized" within the meaning of Section 852 of Revised Codes of Montana, 1935. After an exhaustive review of the history of the two services, the court makes the following pertinent statement:

"It is therefore apparent that a distinction between the 'teaching units' and the research and experiment and general dissemination units has always been recognized by the legislative and executive departments of both the federal and state governments in construing the several acts authorizing and establishing the several institutions, . . . "

While the term "higher educational institutions" of the state has not been judicially defined as embracing only the six units comprising the "Greater University," it is my opinion that, in the light of the foregoing authorities, the term as used in Section 3 of your House Bill No. 10 does not include the Agricultural Experiment Station and its substations or the Extension Service.

Turning now to the general appropriation bills passed by the Twenty-fifth and Twenty-sixth Legislative Assemblies as they pertain to the Agricultural Experiment Station, its substations, and the Extension Service, it will be observed that in House Bill No. 168, passed and approved in 1937, certain sums were appropriated to these services from the University Millage Fund. In addition there was appropriated in the case of the Experiment Station, and its substations, "all earnings which may accrue to the different departments contained herein and all federal funds, of said institution" and in the case of the Extension Service "all income that may accrue to this department from all sources, including federal money."

Under House Bill No. 140, passed and approved in 1939, being the general appropriation bill in connection with these services, the Legislative Assembly recognized the existence of a revolving fund for the services under discussion, apparently under the provisions of Section 194 of the Revised Codes of Montana, 1935, and appropriated specific amounts therefrom. I refrain from any opinion as to the propriety of setting up a revolving fund for these services by virtue of Section 194 for the reason that the question is not herein presented. The Legislative Assembly appears to have disregarded the provisions of Section 194 subsequent to the fiscal biennial following its passage in 1921, inasmuch as it probably contravenes the provisions of Section 12, Article XII of the Constitution (Vol. 15, Opinions of the Attorney General, No. 4), and has placed a clause in each general appropriation bill making the appropriation of income for the next biennial.

The Legislative Assembly may, in an appropriation bill, set apart the proceeds of a tax, income which is derived from some public source, or first paid into a state department for a specific public purpose without definitely naming the amount, and such bill does not conflict with Section 10, Article XII of the Constitution. (See Vol. 15, Opinions of the Attorney General, No. 4, and authorities therein cited.) A recent pronouncement upholding this position is found in Riley v. Johnson, 27 Pac. (2nd) 760 (Cal., 1933). The following text statement from 59 C. J. 250 is an excellent summary of the position generally adopted in this respect:

> "Where a specification of the amount is required, it is not essential or vital to an appropriation that it should be for an amount definitely ascertained prior to the appropriation; and an appropriation, the amount of which will be made certain by a mere mathematical computation, if the provisions of the act are carried into effect, sufficiently complies with this requirement. Where such a requirement is recognized, if there is no constitutional provision requiring the fixing of a maximum in dollars and cents, an appropriation may be valid when its amount is to be ascertained in the future from the collection of the revenue."

I am therefore of the opinion that it would be permissable to appropriate "all earnings" in the manner adopted by preceding Legislative Assemblies, such as is found in House Bill No. 168, passed and approved in 1937.

Very truly yours,

JOHN W. BONNER
Attorney General