

Dear Mr. Craighead:

The factual situation which you have presented to this office for an official opinion is substantially as follows:

How should funds be deposited by the Unemployment Compensation Commission which are received by the Commission from city and county governments for the purpose of establishing and maintaining free public employment offices?

At present, the Commission has two funds: Number 765, consisting of appropriations provided by the legislative assembly for meeting grants-in-aid of the Federal Government for the purpose of maintenance and operation of such free public employment offices; and number 104-28, consisting of money furnished by the Federal Government under budgetary grants by the Social Security Board for the administration and operation of the Unemployment Compensation Commission.

Various county and city governments of this state allocate in their budgets amounts to be used for operation and maintenance of free public employment offices. Some of the counties and cities thus participating in the operation and maintenance of free public employment offices pay their participating allotments directly to creditors and employees for rent or services—while other counties and cities send monthly warrants in the amounts of the budgets arranged to the Commission, which then pays the costs of operation and maintenance. From this last category, the Commission—during the period from July 1, 1940 to June, 1941—received \$18,856.94.

If such moneys as last mentioned above are deposited in fund number 765—consisting of state appropriations—the Federal Government then considers the entire fund as being available for matching under the Wagner Peyser Act. This consequently results in a diminution of federal funds furnished by the commission and commingles those funds for general administration purposes not contemplated by the contributing counties and cities. In addition, at the end of any biennium, the unexpended portion of fund number 765—if any—reverts to the general fund of the state; and, if moneys contributed by

Opinion No. 24.

Unemployment Compensation Commission—Employment Offices—Cities and Towns—Counties—State Treasurer.

Held: Funds received by the Unemployment Compensation Commission from city and county governments for the purpose of establishing and maintaining free public employment offices, under agreements entered into under the authority of section 6, Chapter 164, Laws of 1941, should be kept separate and distinct from other moneys of the commission—and a new and separate fund, with a separate fund number, should be established in order to maintain that distinction and to protect the city and county funds from reversion to the state's general fund or from inclusion in the balance of moneys attributed to grants from the Federal Government.

March 22, 1943.

Mr. Barclay Craighead, Chairman
Unemployment Compensation Commission
Helena, Montana

county and city governments have been deposited in such fund and remain unexpended at the end of a biennium, they are thus converted into state moneys contrary to the purposes contemplated by the contributors. Furthermore, if such moneys contributed by counties and cities are deposited in and spent from fund number 765, the Unemployment Compensation Commission is placed in the anomalous situation of expending more moneys from fund number 765 than were granted by the legislative assembly.

Inasmuch as fund number 104-28 consists entirely of federal moneys received as grants-in-aid for general administrative purposes of the Unemployment Compensation Commission—and is specially designated for the receipt of such federal moneys—the Commission has considered fund number 104-28 as not the proper depository for county and city moneys contributed for operation and maintenance of free public employment offices.

Hence, the question: How should funds be deposited by the Unemployment Compensation Commission which are received by the Commission from city and county governments for the purpose of establishing and maintaining free public employment offices?

Section 12, Chapter 137, Laws of 1937, as amended by Section 6, Chapter 164, Laws of 1941, among other things, provides:

"For the purpose of establishing and maintaining free public employment offices, the commission is authorized to enter into agreements with any political subdivisions of this State or with any private, non-profit organization, and as a part of any such agreement the commission may accept moneys, services, or quarters as a contribution to the employment service account."

House Bill 380 of the Twenty-seventh Legislative Assembly provided in part (page 410, Laws of 1941):

"... there is further appropriated for the use of the commission all sums appropriated or provided by sub-divisions of the State of Montana, including both counties and municipi-

palities, together with a reasonable appraisal of the value of quarters furnished rental free for the use of the commission, by such sub-divisions of this State; the commission shall use the same, or so much thereof as may be necessary, for the purpose of meeting demands for funds from the commission or State of Montana, which may be hereafter made by any and all federal agencies or departments, for the purpose of matching federal funds or meeting other requirements of federal laws or regulations or requirements. . . ."

It must be noted the above language is employed in the appropriation measure under the title, "Unemployment Compensation Commission, Employment Service Division." It becomes obvious the legislative intention, under both Section 6 of Chapter 164 and House Bill 380 of the Laws of 1941, was that the moneys received from counties and municipalities should be used exclusively for the purpose of establishing and maintaining free public employment offices. The legislative intention appears to have been to earmark such moneys for the specific and exclusive purpose of establishing and maintaining such offices. You have indicated the counties and cities participating with the commission consider the moneys they have contributed toward the establishment and maintenance of free public employment offices to be in the nature of trust funds—to be used only for the purposes of such offices—and it appears to me the legislative assembly's enactments can indicate nothing less than full and complete agreement with that theory. To commingle county and city moneys resulting from the agreements authorized by section 6, Chapter 164, Laws of 1941, with moneys appropriated by the state for general administrative purposes or with moneys received from the federal government as grants-in-aid for general administrative funds, would defeat the purpose of section 6, Chapter 164, Laws of 1941, inasmuch as few—if any—counties or cities would be inclined to enter into agreement with the commission if the moneys contributed were not to be earmarked and used solely for employment service purposes.

It is therefore my opinion funds received by the Unemployment Compensation Commission from city and county government for the purpose of

establishing and maintaining free public employment offices should not be deposited in either fund number 765 (state moneys) or fund number 104-28 (moneys furnished by the Federal Government). Such funds from city and county governments should be kept separate and distinct from other moneys of the commission—and new and separate fund, with a separate fund number, should be established in order to maintain that distinction and to protect the city and county funds from reversion to the state's general fund or from inclusion in the balance of moneys attributed to grants from the Federal Government.

Sincerely yours,
R. V. BOTTOMLY
Attorney General