

of this state in order for the state and its officers and agencies to expend the funds for the purposes designated by the federal government.

April 2, 1943.

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

Dear Mr. Craighead:

You have presented this question:

"Is it required that a specific appropriation be made by the legislature of federal funds granted to the State of Montana for a specific purpose, in order that the state of Montana and its officers and agencies may expend such funds for the purposes so designated?"

Your question arises from the fact the Twenty-eighth Legislative Assembly of 1943, in House Bill 151 of the Laws of 1943, failed to appropriate specifically to the Unemployment Compensation Commission for the fiscal year July 1, 1943, to June 30, 1944, all or any money received from the federal government for the purposes of the commission.

The Unemployment Compensation Commission of Montana is a state agency, created by Chapter 137, Laws of 1937. Under Section 11 of the chapter is the statement, "It shall be the duty of the commission to administer this act." A special fund was created for the administration of the law in Section 13 of the chapter. The commission expends several hundred thousand dollars each year in paying salaries, rents, supplies, and similar items. In the six month period from July 1, 1941, to December 31, 1941, you have informed me expenditures amounted to \$161,274.48; and the period from January 1, 1942, to June 30, 1942, totaled \$76,456.57 (Page 88, Report of the Unemployment Compensation Commission of Montana, 1942). These facts are particularly mentioned here for one reason: Almost, but not all of the moneys expended by the commission in the administration of unemployed compensation is furnished the commission by the federal government through the Social Security Board on budgetary grants submitted and approved prior to

Opinion No. 32.

Unemployment Compensation Commission—Legislative Assembly—Appropriations—Federal Monies—Trust Funds.

Held: No specific appropriation to the Unemployment Compensation Commission of federal funds granted to the commission for administrative purposes need be made by the legislative assembly

the beginning of each semi-annual period.

The Social Security Act (42 U. S. C. A., Title III, Section 301, 302, 303) provided that the Social Security Board, out of appropriations by Congress, certify to the Secretary of the Treasury of the United States a sum for payment to each state in an amount necessary for the proper and efficient administration of the law. Thereupon, the Secretary of the Treasury of the United States issues a treasury warrant to the state agency charged with the administration of the law in an amount so certified as being payable.

In prior years, the legislative assembly of this state has, in its general appropriations bill, appropriated from the Unemployment Compensation Administration Fund "all federal funds received for this purpose." Example of this found by turning to House Bill 380 of the Laws of 1941. This year, however, the Twenty-eighth Legislative Assembly's action is not so clear and unambiguous. Among the measures contained in the legislative jam which existed on the sixtieth day of the session was the general appropriations bill; and the fact that consideration was hasty and abnormally speeded did not contribute to the clarity of that important measure.

The general appropriations bill of the Twenty-eighth Legislative Assembly (House Bill 151 of the Laws of 1943)—as it was passed and printed by the house of representatives—was amended by the senate (Senate Amendments to House Bill 151—3/4/43) which sought to clarify the bill so as to mention specifically federal funds for unemployment compensation administration, as well as county and city funds furnished to the commission for employment service purposes. The house of representatives failed to concur in the senate amendments, and a conference committee report (Amendments to Amendments of Senate on House Bill 151—3/4/43) changed the wording of the bill so that the enrolled bill, as finally passed by both branches, and insofar as it relates to appropriations for the Unemployment Compensation Commission, reads:

"Section 2 . . . for the period beginning July 1, 1943 and ending June 30, 1944 . . ."

"UNEMPLOYMENT COMPENSATION COMMISSION

"FROM THE UNEMPLOYMENT COMPENSATION ADMINISTRATION FUND.

"For administrative salaries and expenses Ten Thousand dollars (\$10,000.00), to be used by the Commission for the purpose of meeting allotments in order that the State may receive grants-in-aid of Federal funds and such other purposes as may be approved by the State Board of Examiners.

"FROM THE UNEMPLOYMENT BENEFIT FUND.

"So much thereof as may be necessary to carry out the provisions of law . . .

"Section 3 . . . for the period beginning July 1, 1944, and ending June 30, 1945 . . .

"UNEMPLOYMENT COMPENSATION COMMISSION.

"FROM THE UNEMPLOYMENT COMPENSATION ADMINISTRATION FUND.

"Hereby appropriated for the use of the Commission all moneys received from the Federal Government for this purpose.

"FROM THE UNEMPLOYMENT BENEFIT FUND.

"So much thereof as may be necessary to carry out the provisions of law."

Thus it is evident the enrolled bill does not contain any language which directly appropriates federal funds granted to the state for the fiscal year July 1, 1943, to June 30, 1944.

Montana's legislative assembly—by enacting Chapter 137, Laws of 1937, and amendments thereto—has given us an unemployment compensation law which has been approved by the Social Security Board as being in conformity with the requirements of Title III of the Federal Social Security Act; and thereunder administrative funds are allocated to this state for administrative purposes peculiarly designated for a specific purpose and subject to the audit and approval of the Social Security Board. Because these federal funds are granted for a specific purpose they cannot be used for any other purpose. They cannot be deposited in the general funds of the state and made a part thereof; and in practice they now are, and always have been deposited in a special fund bearing a distinctive number (Fund 104-28). The

treasurer of the state of Montana, who is ex-officio the treasurer of the commission, is custodian of these federal monies. If he or any other state officer should attempt to use the funds for any purpose other than the purpose for which they were granted by the federal government, an action would lie to enjoin the unauthorized use. They are trust funds in every sense of the word, and must be treated as such.

The solution of your problem thus becomes at once apparent, for there is clear and specific authority on the type of question involved. I invite your study of Opinion Number 87, Volume 16, Report and Official Opinions of the Attorney General, page 83, wherein Attorney General Raymond T. Nagle ruled funds received from the federal government under the Federal Emergency Relief Act of 1933, for relief purposes, were trust funds to be disbursed by the proper officials and no appropriation by the legislative assembly was necessary in order to authorize such disbursement. The opinion contains lengthy citation of authority from this and other jurisdictions, and I am impressed by the apparent research and study which combined to reach the holding thereof.

I agree with the holding in Opinion Number 87, Volume 16, Report and Official Opinions of the Attorney General; and, applying like reasoning to the problem you have presented, I answer your question in the negative. Although custom has established the practice of the legislative assembly's specifically appropriating to the Unemployment Compensation Commission federal monies granted by the federal government for administrative purposes, such an appropriation is not essential as a condition to the expenditure of such monies for purposes designated by the federal government by state officers and agencies.

Sincerely yours,
R. V. BOTTOMLY
Attorney General