

December 1, 1945.

Mr. John J. Holmes
State Auditor
State Capitol
Helena, Montana

Dear Mr. Holmes:

You have submitted the following question to me for my opinion:

"We are in receipt of a request from the Chairman of the Post War Planning and Construction Commission for a state warrant to be issued to the Union Bank and Trust Company of Helena, Montana, in the sum of \$2,250,000.00. The warrant is to be drawn on Fund No. 121 (Post War Planning and Construction Reserve Fund), in payment of U. S. certificate of indebtedness, bearing interest at the rate of $\frac{7}{8}$ per cent.

"1. May the commission delegate its investment power to a single member or to persons or state boards who may not be among the membership of the commission?

"2. Should the resolution of the commission concerning investments specify the amount to be invested?

"3. In your opinion, is the requested warrant one which the auditor may properly and legally issue?

In answering your inquiry, the order for the issuance of the warrant is as follows:

STATE OF MONTANA
POST WAR PLANNING AND
CONSTRUCTION COMMISSION
Order on State Auditor for Issuing
Warrant

November 29, 1945.

To the State Auditor
Helena, Montana

Dear Sirs:

Please issue a warrant to the Bank herein named for the credit of the Post War Planning and Construction Commission, in the amount, upon the fund and for the purpose shown, as follows:

Warrant to be issued to: Union
Bank and Trust Co.,

For credit of: Post War Plan-
ning and Construction Commission

Opinion No. 103.

Post War Planning Commission—Warrant for Bonds—Investment, Post War Planning Commission—Authority of Post War Planning Commission, Warrant.

Held: A warrant or warrants issued by your (State Auditor's) office on the order of the Post War Planning and Construction Commission or its authorized chairman, by resolution of said commission, is your legal authority for the issuance of said warrant or warrants.

(Post War Planning and Construction Reserve Fund.)

Amount: \$2,250,000.00 (Two million two hundred and fifty thousand dollars).

Fund: No. 121.

In payment of: U. S. Certificates of Indebtedness, bearing interest at the rate of $\frac{7}{8}$ per cent, dated December 3, 1945, due December 1, 1946.

Authorized by the Post War Planning and Construction Commission on August 31, 1945.

Respectfully,

/s/ SAM C. FORD.

Governor and Chairman of
the Post War Planning and
Construction Commission

Attest:

/s/ Eloise Gates
Secretary of the Post War
Planning and Construction
Commission

The order is based on a resolution of the said commission as follows:

"That the chairman of this commission, or any state board or agency, authorized by law to invest state funds, invest such money as is available of the Post War Planning and Construction reserve fund, created by the provisions of Chapter 148, Laws of 1945, during the next war bond drive, in short term treasury bonds or certificates."

Chapter 148, Laws of 1945, creates and establishes a fund to be known as the "Post War Planning and Construction Reserve Fund," appropriates money to said fund, provides for the investment of said fund, provides and creates a "Post War Planning and Construction Commission" and prescribes its duties.

Answering your first question, it is to be noted that Section 2 of the act provides as follows:

"This fund shall be kept entirely separate and apart from all other funds of the State of Montana. The commission as provided for herein shall have the sole power and authority to invest all moneys of the fund in such securities as are legal for the investment of funds of the State of Montana. The interest and

income from the investment of the fund shall be a part of the funds."

Section 7, paragraph (e) of the act provides:

"The commission is hereby granted the sole power of investment of the fund herein provided for."

Here the commission has acted by passing the proper resolution authorizing its chairman to invest such money as is available of the Post War Planning and Construction reserve fund, in short term treasury bonds or certificates. The commission's chairman, being the executive officer of the commission, has presented to you the order for issuance of the warrant in the sum stated, to the banking institution named therein for the purchase of U. S. certificates of indebtedness, and designating the proper appropriation and fund against which the warrant is to be drawn.

It, therefore, appears that this transaction is analogous to the investment of state funds by the Commissioner of State Lands and Investments, who invests state funds under the direction and by resolution of the State Board of Land Commissioners. Here the Post War Planning and Construction Commission designated its chairman to invest "such money as is available of the Post War Planning and Construction fund," which would include all of the appropriation of \$4,500,000.00, less the express appropriations of \$10,000.00 for administrative expenses and the sum of \$250,000.00 made available for architectural and engineering costs.

The foregoing answers your first and second questions.

The legislature, by Chapter 148, Laws of 1945, in clear and easily understood language, granted to the Post War Planning and Construction Commission, the sole power and authority to invest such appropriated fund, and of course no investment of such funds could be made without a warrant or warrants drawn by your office on the proper appropriated fund. Such funds are appropriated for investment by said commission under the terms of the act. The legislature having authorized by law the investment, the warrant or warrants which you issue are therein authorized by law, as required in Subdivision 17 of Section 151, Revised Codes of Montana, 1935.

Therefore, it is my opinion that the Post War Planning and Construction Commission has, by Chapter 148, laws of 1945, been granted the sole power and authority to invest the funds of the Post War Planning and Construction reserve fund, less the specific appropriations of \$10,000.00 for administrative expenses, and the sum of \$250,000.00 for architectural and engineering costs. Said commission has legally acted by resolution directing the investment of \$2,250,000.00 of such fund in short term treasury bonds or certificates and has designated its chairman to consummate the investment, which investment is in securities authorized by the act. Said commission authorized the investment of such money as is available, which includes all of said fund, except the two specific appropriations as set forth above.

Such investment of this fund has been authorized by Section 2 of said act. Therefore, a warrant or warrants issued by your office on the order of the Post War Planning and Construction Commission, or its authorized chairman, by resolution of said commission, is your legal authority for the issuance of said warrant or warrants.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General