

intended as needed, and expended for the purpose for which such funds are granted.

December 6, 1945.

Mr. James A. McCain, President
Montana State University at Missoula
Missoula, Montana

Dear President McCain:

The following has been submitted by you for my opinion:

You have informed me that the Veterans' Bureau is now in the process of formulating a contract with the State University at Missoula whereby the Veterans' Bureau will pay to such institutions certain sums of money for each ex-service man or woman attending school under the terms of the Servicemen's Readjustment Act of 1941 and Public Law 16 of the Seventy-Eighth Congress, Chapter 22, First Session, and all acts supplementary and amendatory thereof.

These sums are made up of two items. The first item is all sums any other student at the institution would pay for attending the institution. The second item is a payment for special services, such as consulting with each veteran.

Your question is how these funds should be handled. Should they be placed in a special fund, or should they be paid into the general fund of the state? You call my attention to Chapter 14, Laws of 1941.

Your question is common to each unit of the University and what I say here will be applicable to each of the six units of the University of Montana.

In the first place, it should be realized that the federal government appropriates these funds to be administered by the Veterans' Bureau for a special and distinct purpose, that is, for the benefit of the returning serviceman or woman who is entitled to such grants or bounty under the terms of the federal act. When such funds are paid to any unit of the University by the Veterans' Bureau, they are accepted by such institution as trust funds to be used only for the purpose for which granted.

Section 3 of Chapter 14, Laws of 1941, reflects the legislative intent in stating in the first part thereof as follows:

Opinion No. 104.

University of Montana—Veteran's Bureau—Education, Veterans—Trust Funds, University—Funds, Trust, University.

Held: Funds provided by the federal government by grant or public bounty and dispersed to the several units of the University of Montana for particular purposes by the Veterans' Bureau are trust funds, and come within the provisions of the first part of Section 3 of Chapter 14, Laws of 1941.

2. Such federal funds shall be kept by the state treasurer in specific fund accounts so designated as to clearly indicate their purposes and source and may be drawn upon by the unit of the university of Montana for which

“For the support and endowment of each and every of the state institutions of the State of Montana now existing or hereafter to be operated there is annually and perpetually appropriated respectively:

“The income from all permanent funds and endowments, and from all land grants as provided by law and all such contributions as may be derived from public or private bounty. All such funds shall be kept by the state treasurer in specific fund accounts, so entitled as to clearly indicate their purposes and sources.” (Emphasis mine.)

It is to be noted that this part of the section has been in effect since 1921.

The section then continues by saying:

“All moneys received or collected on and after July 1, 1941, by all higher educational institutions . . . for any purpose whatever . . . shall be paid over to the state treasurer who shall deposit the same to the credit of the general fund of the state.”

Obviously, there is a direct conflict between these two parts of the section. The first part directs that the income from all permanent funds—endowments, income from land grants, all contributions from public bounty—shall be kept by the state treasurer in specific fund accounts so entitled as to clearly indicate their purposes and sources, the legislature recognizing such grants, contributions and public bounties as trust funds which could not be placed in the general fund of the state under the provisions of Sections 2 and 12 of Article XI of our State Constitution.

To give constitutional sanction to the said section, and to give effect to the first and second part of said section, it is imperative that the second part of the section be read by supplying the word “other” after the word “all” so as to give the section constitutional sanction, and to obviate the nullifying of the first part of the section by the terms of the second part thereof. It would then read as follows:

“All other moneys received or collected on and after July 1, 1941, by all higher educational institutions . . . for any purpose whatever, except

such as may have been heretofore pledged to secure the payment of principal and interest of bonds issued in connection with the construction of buildings, or which may constitute temporary deposits, all or part of which may be subject to withdrawal or repayment, shall be paid over to the state treasurer who shall deposit the same to the credit of the general fund of the state.”

The intent of the legislature was, of course, to give effect to each part of the section, and to pass only constitutional measures, and unless we attribute the meaning to the provisions of these two parts of said section as indicated, the language of one nullifies the other, but with the construction we have given, each is harmonious and does not unduly impinge upon the provisions of the other.

Our Supreme Court has held that:

“When the intention of the legislature can be ascertained from the statute, words may be modified, altered or supplied so as to compel conformity of the statutes to that intent.” (State v. District Court, et al, 83 Mont. 400; 272 Pac. 525; 2 Lewis Sutherland, Statutory Construction, 2d Ed. 663.)

On September 3, 1941, in construing Chapter 14, Laws of 1941, this office rendered Opinion No. 231, page 365, Volume 19, Report and Official Opinions of the Attorney General, wherein the effect of said chapter on certain similar trust funds was considered, and it was held as follows:

“Trust funds may not be diverted to the general fund and mingled therewith, but must be kept separate and earmarked for the purposes intended. The legislature did not intend by Chapter 14, Laws of 1941, to divert trust funds to the general fund, but rather that they be kept separate and earmarked for purposes intended.”

The legislature of the State of Montana has held two regular sessions since the rendering of said opinion and did not amend or modify said act. This fact would add weight to the argument that said opinion was in agreement with the legislative intent in the construction of the same.

To give the section an interpretation to the effect that such funds paid to the University at Missoula by the Veterans' Bureau for the specified purposes should be paid into the general fund of the state would defeat the purpose of the grants or bounties and the Veterans' Bureau no doubt would refuse to make any further payments for the reason that such funds, in that event, would be diverted to other purposes and could not be used for the specified purposes. Under such holding the University would receive no payments for these veterans as under our state law, Chapter 44, Laws of 1945, the veteran would be entitled to attend without any payment. The federal government is not obligated to make these payments, as under our state law, such student may attend without any such payments, but the federal government, through the Veterans' Bureau, goes further and makes these contributions out of public bounty.

Fortifying this holding that such grants or bounties should come under the provisions of the first part of Section 3 of Chapter 14, Laws of 1941, it is to be noted that in the Appropriation Act for 1945, being House Bill No. 333, at pages 621 and 627, after making the respective appropriations, the legislature provided:

"There is hereby appropriated for the use and benefit of the state university, all income from land grants, endowments, trust funds and federal grants which may be received and in addition all balances on hand to be used for the purposes for which such funds were accumulated or given."
(Emphasis mine.)

The foregoing attempted appropriation is merely a legislative sanction for the use of said funds.

It therefore appears, and it is my opinion that such funds are trust funds, derived from the federal government, by grant or public bounty, and dispersed to the several units of the University of Montana for particular purposes by the Veterans' Bureau and therefore fall under the first part of Section 3 of Chapter 14, Laws of 1941, and that all such funds shall be kept by the State Treasurer in specific fund accounts so entitled as to clearly indicate their purposes and sources, and

may be drawn upon by such unit of the University of Montana as needed for and expended for the purposes for which such funds were granted.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General