

Opinion No. 133.

Montana Highway Department—Highway Department—State Highway, Funds—Funds, State Highway.

Held: Under the present requirements of the law, the Montana Highway Commission cannot legally expend moneys from the state highway fund of Montana for construction, reconstruction, betterment, maintenance, or at all, on the Red Lodge-Cooke City highway.

March 13, 1946.

Mr. Howard W. Holmes
Chief Engineer
Montana Highway Department
Helena, Montana

Dear Mr. Holmes:

You have submitted the question of whether the Montana Highway Department can legally expend moneys from state highway funds on the highway from Red Lodge in Carbon County, southwest to the Montana-Wyoming border. The facts in this case disclose that this highway, known as the Red Lodge-Cooke City Highway, was completed in 1934 by the Department of Interior through the National Park Service under a special act of Congress (46 Stat. 1053, 16 U. S. C. A. 8 A-C) and without aid from the Montana Highway Department or the Public Roads Administration. It is to be remembered that the National Park Service is under the authority of the Department of the Interior and that the Public Roads Administration is under the Department of Agriculture. (42 Stat. 216, 23 U. S. C. A. 19 and 20.)

Section 1791, Revised Codes of Montana, 1935, provides that the Federal Aid Road Act of July 11, 1916, is assented to by the State of Montana, and authorizes the State Highway Commission "to enter into all contracts and agreements with the United States government or any officer, department or bureau thereof, relative to the construction or maintenance of highways in the State of Montana." This law was enacted as Section 9, Chapter 10, Ex. L. 1921.

However, in 1927 the legislature enacted Chapter 18, Laws of 1927, Sec-

tion 2 of which now appears as Section 2396.2, Revised Codes of Montana, 1935, as amended by Chapter 74, Laws of 1945. This act provides:

“All moneys of the state highway fund, including moneys arising from the license tax upon dealers in gasoline and motor fuels, but excluding moneys being held in such fund for refund or drawback purposes and expenses of collection and enforcement, shall be used and expended by the state highway commission in the construction, betterment, maintenance, administration and engineering on the federal highway system of highways in this state selected and designated under the provisions of the federal aid act, approved July 11, 1916, and the federal highway act approved November 9, 1921, and all amendments thereto, and for the purpose of construction, reconstruction, betterment, maintenance, administration and engineering of highways leading from each county seat in the state to said federal highway system of federal aid roads where such county seat is not on said system, and for the purpose of construction, reconstruction, betterment, maintenance, administration and engineering of such other roads as have been or may be authorized by the laws of Montana . . .” (Emphasis mine.)

Under this law, expenditures from the highway fund or limited to three purposes, to-wit: (1) the federal aided system of highways under the Federal Aid Act of 1916 and the Federal Highway Act of 1921; (2) highways connecting county seats with the federal aided system of highways; and (3) such other roads as are authorized by the laws of Montana.

The Red Lodge-Cooke City highway is not on the federal aid system of Montana, rather it is built by the National Park Service under authority of the Department of Interior without the expenditure of federal aid moneys or Montana moneys. It is not a connection between a county seat and a federal aid highway, nor is it a road authorized by the laws of Montana.

Therefore, under the present requirements of the law, it is my opinion that the Montana Highway Commission cannot legally expend moneys from the

State Highway fund of Montana for construction, reconstruction, betterment, maintenance, or at all, on the said Red Lodge-Cooke City highway.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General