Opinion No. 212.

Montana Soldiers' Home—Soldiers' Home—Appropriation, Montana Soldiers' Home.

Held: To be included in the category of "operational" expense, an expenditure must be one which is "necessary" for the operation of the department, board, bureau, etc., to which the appropriation applies. This question of what is "necessary" in regard to a new proposal is a question for the legislature to pass upon. Until this new proposal is defined by the legislature as "capital" or a "capital replacement," or until such time as the legislature approves the project, the present appropriation cannot be used for the payment of an architect's drawings, sketches or plans of a proposed building.

October 22, 1946.

Mr. Harry E. Johnson, Chairman
Board of Managers
Montana Soldiers' Home
Columbia Falls, Montana

Dear Mr. Johnson:

You have requested an opinion advising whether or not you have funds available for the payment of an archi-

tect who is drawing the sketches for a proposed new kitchen and dining room.

House Bill No. 332 of the 1945 Legislative Assembly entitled.

> "An Act to Appropriate Money for the Operation, Maintenance and other Purposes, As Designated Herein, for Certain State Institutions, for the Period Beginning July 1, 1945 and Ending June 30, 1947,"

provides that for the State Soldiers' Home there is appropriated from the General Fund for the period beginning July 1, 1945, and ending June 30, 1947:

> "For **salaries and expenses**, forty-two thousand nine hundred eight-eight dollars.....$42,988.00." (Emphasis mine.)

"Salaries and expenses" are defined by this bill (House Bill No. 332) as:

> ". . . any expense, including salaries, capital, repairs and replacements and operation, as defined above."

In turn, this same bill defines the following:

> "(1) The term 'salaries' means the compensation paid in consideration of services rendered to all regularly elected or appointed officers or employees whose duties are of a continuous nature. It does not mean wages or compensation paid in consideration of services rendered to temporary employees and for persons appointed or hired for a period of less than one month, the payment of which is hereby made a proper charge from funds appropriated for 'operation'.
>
> "(2) The term 'capital', unless otherwise designated or defined, means all articles, fixtures and goods of a permanent nature, but, in no event shall the term 'capital' mean buildings or purchase of lands, unless specifically defined herein. Store supplies shall have the same limitations.
>
> "(3) The term 'repairs' means the amount to be paid for the repair of any capital asset, including buildings or lands.
>
> "(4) The term 'replacements' means the amount to be paid for the replacing of any capital asset, as defined in paragraph (2) above, by the purchase of a new one to take its place by reason of the original being worn out or broken.
>
> "(5) The term 'operation' means all other expenditures which are necessary for the operation of the department, board, bureau, commission or institution to which the appropriation applies, including wages of employees paid to temporary employees for work not considered of a continuous nature."

In view of the foregoing paragraphs such expenditure could not come within the definition of salaries since the architect's work is of a temporary, not a continuous nature. In addition, the architect is not a regularly elected or appointed officer or imployee. Further, this can be viewed as neither a capital nor a replacement expense owing to the fact such a capital expense must be one "specifically defined." Hence a proposed venture as yet not presented to the legislature could not fall into such category. Thus, the category of "operational" expense remains. To be so included an expenditure must be one which is "necessary" for the operation of the department, board, bureau, etc., to which the appropriation applies. This question of what is "necessary", in regard to a **new proposal**, is a question for the legislature to pass upon and not a question upon which this office can render an opinion.

Therefore, it is my opinion that until this **new proposal** is defined by the legislature as "capital" or "capital replacement", or until such time as the legislature approves the project, the present appropriation cannot be used for the payment of architect's drawings, sketches or plans of a proposed building.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General