

Opinion No. 99

Appropriations—Public Employees' Retirement System—State Contributions.

Held: Chapter 40, Laws of 1947, constitutes an appropriation of monies previously appropriated to all departments, boards, bureaus, commissions and other agencies of the state and unexpended by them during the biennium July 1, 1945 to July 1, 1947, in an amount equal to the percentage of total compensation paid their respective employee-members of the public employees' retirement system designated in the provisions of Chapter 212, Laws of 1945. Such appropriation under our Constitution expires two years after the date of the approval of Chapter 40.

January 26, 1948

Mr. John Norman Matthews
State Accountant
Capitol Building
Helena, Montana

Dear Mr. Matthews:

You have inquired whether Chapter 40, Laws of 1947, constitutes an appropriation of monies for a two-year period commencing on the date of the approval of the chapter (February 11, 1947).

Chapter 40, supra, provides:

"All departments, boards, bureaus, commissions, and other agencies of the state shall pay to the public employees' retirement funds out of monies heretofore appropriated to them and unexpended during the biennium July 1, 1945, to July 1, 1947, or hereafter appropriated to them a sum equal to the percentage of total compensation paid members of the retirement

system and designated in the provisions of Chapter 212 of the laws of the twenty-ninth legislative assembly, 1945."

Chapter 212, Laws of 1945, which created the public employees' retirement system in this state, and provided for contributions to be made by the state on behalf of employee-members, failed to make an appropriation of the state's contribution, and hence, after Chapter 212 became effective on July 1, 1945, no state departments, boards, bureaus or commissions made the 3% contribution required by the law. The 1947 legislature passed Chapter 40, Laws of 1947, above quoted, for the purpose of curing this situation, and as I view it, not only authorized all departments, boards, bureaus, commissions and other agencies of the state to pay the state's contribution to the retirement system on behalf of member employees, but ordered them to do so as well. It is obvious from the above quoted language the legislative assembly contemplated certain unexpended balances would exist in the regular appropriations which had been made at the 1945 session, and for reasons of its own the legislative assembly decided such funds could be used without the necessity of appropriating further amounts.

To be sure, Chapter 40, supra, is not in the exact form of the usual appropriation bills employed by our legislature; but no particular language or phrasing is necessary to constitute an appropriation. Our Supreme Court has said in the case of *State ex rel. Dean v. Brandjord* (1939) 108 Mont. 447, 454, 92 Pac. (2) 273:

"The phrase contained in the constitutional provision, 'appropriations made by law' does not require the introduction of an appropriation bill, the requirement being made by an appropriation sanctioned by law. . . . The usual statement of the requirement is 'that no specific language is necessary to make an appropriation for the test is as to whether or not the people have expressed an intention that the money in question be paid' . . ."

Section 12, Article XII of the Montana Constitution provides, among

other things, "No appropriation of public monies shall be made for a longer term than two years." Hence, the appropriation contained in Chapter 40, supra, expires two years after the date of its approval, February 11, 1949.

It is my opinion Chapter 40, Laws of 1947, constitutes an appropriation of monies previously appropriated to all departments, boards, bureaus, commissions and other agencies of the state and unexpended by them during the biennium July 1, 1945 to July 1, 1947, in an amount equal to the percentage of total compensation paid their respective employee-members of the public employees' retirement system designated in the provisions of Chapter 212, Laws of 1945. Such appropriation under our Constitution expires two years after the date of the approval of Chapter 40.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General