

Opinion No. 92**State Board of Examiners—Montana State College—State Board of Education.**

Held: 1. The State Board of Examiners may not approve the transfer of the balance of Account No. 104-36 in the State Treasury to the Montana State College Research Foundation for the reason that the Montana Constitution prohibits the State of Montana from loaning its credit to or making any donation or grant to any corporation.

February 18th, 1950.

Mr. W. L. Fitzsimmons
Clerk, State Board of Examiners
State Capitol
Helena, Montana

Dear Mr. Fitzsimmons:

You have requested my opinion as to whether the State Board of Examiners may approve the transfer of the balance of funds in Account No. 104-36 in the State Treasury to the Research Foundation at Montana State College. The facts as set forth in the material you have supplied are as follows. Account No. 104-36 is made up of funds paid to Montana State College by virtue of participation in the Civilian Pilot Training Program during the years from 1940 through 1943. Due to the fact that the unit cost of administering the program decreased as enrollments increased, a balance of \$6,554.42 remained in Account No. 104-36 at the time the program was discontinued.

On September 21st, 1949, the State Board of Education passed a resolution that the State Board of Examiners be requested to transfer the balance in Account No. 104-36 to the Research Foundation at Montana State College to be used for research projects and to further the program of the Foundation as set up by its Board of Directors.

The articles of incorporation of the Montana State College Research Foundation reveal that it is a private non-profit corporation formed for the purpose of promoting educational objectives by encouraging, fostering and conducting scientific investigations and research by acquiring and disseminating knowledge in relation thereto. The articles also reveal that the control of the corporation is in the hands of the board of directors and that there shall be no members other than the persons constituting the board of directors.

The power of the State Board of Examiners to control the disposition of the balance of the funds remaining in Account No. 104-36 is provided by Section 75-310, Revised Codes of Montana, 1947 (formerly Section 850, Revised Codes of Montana, 1935). Section 75-310 is as follows.

"The State Board of Examiners of the State of Montana shall have supervision and control of all expenditures of all moneys, appropriated or received for the use of said institutions from any and all sources, other than that received under and by virtue of the Acts of Congress, hereinbefore referred to, and said State Board of Examiners shall let all contracts, approve all bonds for any and all buildings or improvements, and shall audit all claims to be paid from any moneys, other than that received under and by virtue of the Acts of Congress herein referred to; but said State Board of Examiners shall have authority to confer upon the executive boards of such institutions such power and authority in contracting current expenses, and in auditing, paying, and reporting bills for salaries or other expenses incurred in connection with said institutions, as may be deemed by said State Board of Examiners to be to the best interest of said institutions."

The institutions referred to in the above quoted section are the units of the University of Montana, and other State Institutions. The exceptions contained above relating to moneys received under Acts of Congress do not apply to the funds under consideration in this opinion. The Acts of Congress "hereinbefore referred to" are those now contained in Section 75-709, Revised Codes of Montana, 1947 (formerly Section 897, Revised Codes of Montana, 1935) and they were all enacted prior to 1910 and have no relation to funds received under the Federal Civilian Pilot Training Program.

Inasmuch as the Montana State College Research Foundation is a private corporation and is not under the control of and is in no sense a part of Montana State College, the prohibitions of Section 1 of Article XIII of the Montana Constitution must be examined. Section I of Article XIII is as follows:

"Neither the state, nor any county, city, town, municipality, nor other subdivision of the state shall ever give or loan its credit in aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association or corporation, or become a subscriber to, or a shareholder in, any company or corporation, or a joint own-

er with any person, company or corporation, except as to such ownership as may accrue to the state by operation or provision of law."

In view of the language of this Constitutional provision I am compelled to rule that the balance of funds in Account No. 104-36 may not be transferred to the Montana State College Research Foundation. I regret the necessity of this ruling as I am sure that the attainment of the objectives proposed by the Montana State College Research Foundation would be of lasting scientific and cultural benefit to the State of Montana. However, the Constitution provides for no exceptions from the mandate of Section 1 of Article XIII and my office cannot attempt to establish or create the precedent of deviating from the principles which the people of Montana laid down to govern their actions, no matter how exceptional the case may be or how worthy the cause.

It is my opinion that the State Board of Examiners may not approve the transfer of the balance of Account No. 104-36 in the State Treasury to the Montana State College Research Foundation for the reason that the Montana Constitution prohibits the State of Montana from loaning its credit to or making any donation or grant to any corporation.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.