

Dear Mr. Johnson:

You have inquired whether the "encumbrance" of \$5,000.00, covering Senate Resolution (S. J. 569-579) and House Resolution No. 4 (H. J. 632-636) should be charged against the funds appropriated for legislative expense.

You state that you have unpaid claims at hand which are charges against the appropriations, also, but which you cannot process due to the aforementioned "encumbrance".

I find no provision in the Constitution or statutes of the State of Montana regarding any "encumbrances" upon appropriated funds.

While the procedure of filing encumbrances against funds to demonstrate a potential claim may be a valid book-keeping transaction for the purpose of your office, it has no validity as a claim against appropriated funds.

Money is paid out of the treasury for proper claims, and only upon an appropriation made by law and on warrant drawn by the proper officer in pursuance of law, Article V, Section 34, Constitution of Montana; and after examination by the State Board of Examiners, Article VII, Section 20, Constitution of Montana.

Legislative expenses are governed, in part, by Article V, Section 28, Constitution of Montana:

"The legislative assembly shall prescribe by law the number, duties and compensation of the offices and employees of each house; and no payment shall be made from the State Treasury, or be in any way authorized to any such person except to an acting officer or employee elected or appointed in pursuance of law."

"No law shall be passed except by bill, and no bill shall be altered or amended on its passage through either house as to change its original purpose." Article V, Section 19, Constitution of Montana

"No act of the legislature has the force of law . . . unless the requirements of this section . . . are met." State ex rel. Payton v. Cunningham, 39 Mont. 197, 103 Pac. 497.

It is clear that the resolution of one house of the legislature cannot have

Opinion No. 131

**Legislature, Claims Against—
Resolutions—Appropriations—
Expenses—Constitution, Montana,
Article V, Section 34, Article V,
Section 28, Article V, Section 32.**

Held: An "encumbrance" against an appropriated fund takes no precedence over a valid claim properly presented against such fund and no expenditure of a legislative expense fund duly appropriated by a general law could properly be made upon the basis of a resolution of a single house of the legislature nor for anything but an ordinary expense incident to the sixty day session of the legislative assembly.

December 30, 1962.

Mr. A. M. Johnson
State Controller
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Helena, Montana

the force of law so as to permit thereby the expenditure of public funds. Moreover, the appropriations for the Thirty-second Legislative Assembly were as follows: On January 5, 1951, by House Bill 1 there was appropriated \$25,000.00 "for the payment of incidental expenses of the thirty-second legislative assembly"; on February 15, 1951, there was appropriated \$25,000.00 "for payment of incidental expenses of the thirty-second legislative assembly." In each bill there were appropriated additional sums for mileage and per diem of members and for per diem of officers and attaches of the thirty-second legislative assembly. Additionally there was a provision that any surplus remaining in any item could be transferred to either of the other two items so long as the aggregate amount was neither increased nor decreased.

Any expenditure of these funds must be in accordance with the provisions of this law by virtue of Article V, Section 28, Constitution of Montana. (supra)

The Thirty-second Legislature Assembly convened on January 1, 1951, and ended on March 1, 1951 (Montana Session Laws, 1951).

The House Journal, Thirty-second Legislative Assembly, page 1 states:

"Pursuant to the Constitution of the State of Montana, at the hour of 12:00 noon, the House of Representatives of the Thirty-second Legislative Assembly of the State of Montana, was called to order by the Honorable Sam W. Mitchell, Secretary of State of the State of Montana, who extended greetings to the assembly on behalf of the State of Montana."

The Senate Journal, Thirty-second Legislative Assembly, page 1, states:

"At 12:00 o'clock Noon, Paul Cannon, Lieutenant Governor of the State of Montana and President of the Senate, pursuant to the Constitution of the State, called the Senate of the Thirty-second Legislative Assembly of the State of Montana to order."

The House Journal, page 657, states:

"At 11:58 P. M., it was moved by McElwain, duly seconded and carried, that the House of Representa-

tives of the Thirty-second Legislative Assembly of the State of Montana do now stand adjourned sine die."

The Senate Journal, page 596, states: "Moved by Senator Mahoney of Garfield, duly seconded and carried, that the Senate of the Thirty-second Legislative Assembly adjourn sine die at 11:58 on the Sixtieth Legislative Day."

At the adjournment of the session there could no longer be a Thirty-second Legislative Assembly and the appropriation was ended except for those ordinary claims incidental to such assembly.

The payment from the treasury must be upon claims properly presented and passed upon according to law. See Sections 82-1101 through Section 82-1121, Revised Codes of Montana, 1947. If the fund is exhausted by such proper claim, any further valid claim must await a later assembly and a later appropriation, Section 82-1112, Revised Codes of Montana, 1947.

Article V, Section 32, Constitution of the State of Montana, states:

"The general appropriation bills shall embrace nothing but appropriations for the ordinary expenses of the legislative, executive and judicial departments of the state . . . All other appropriations shall be made by separate bills each embracing but one subject." (emphasis supplied)

The ordinary expenses incident to the Thirty-second Legislative Assembly would be "any expense which occurs from time to time and is likely to recur in the proper operation and maintenance of the department of the state government . . ." (Cf. *Miller Ins. v. Porter*, 93 Mont. 562).

It follows, therefore, that no "encumbrance" could prevail as against a proper claim and further that no expenditure of a legislative expense fund duly appropriated by a general law could properly be made upon the basis of a simple resolution of a single house of the Legislature, nor for anything but an ordinary expense incident to the sixty day session of the Thirty-second Legislative Assembly.

Very truly yours,
ARNOLD H. OLSEN
Attorney General