

**Opinion No. 83**

**Bonds — Pledge of Income and  
Interest for Payment of Bonds—Land  
Grant Funds — Eastern Montana  
College of Education — Western  
Montana College of Education**

HELD: 1. The State Board of Education has the power and authority to pledge one-half of the interest and income realized from the land grant received from the Federal Government under Section 17 of the Enabling Act for the payment of

housing facility bonds at each of the two normal schools in the State of Montana which are Eastern Montana College of Education and Western Montana College of Education.

2. The pledge of such income is junior to the prior pledge for bonds heretofore issued.

October 29, 1956

Mr. Rush Jordan, President  
Western Montana College  
of Education  
Dillon, Montana  
Mr. A. G. Peterson, President  
Eastern Montana College  
of Education  
Billings, Montana

Gentlemen:

You have requested my opinion concerning the power and authority of the State Board of Education to pledge the interest and income from the land grants received from the Federal Government "for state normal schools" in Section 17 of the Enabling Act for the payment of housing facility bonds.

Under Section 75-107, R.C.M., 1947, the State Board of Education has the general control and supervision of Montana State Normal College and Eastern Montana State Normal School. This same statute, in subsection 11, grants the power to the State Board of Education:

"To receive from the state board of land commissioners, or other boards, or persons or from the government of the United States, any and all funds, incomes, and other property to which any of said institutions may be entitled, and to use and appropriate the same for the specific purpose of the grant or donation, and none other; and to have general control of all receipts and disbursements of any of said institutions."

Chapter 2 of Title 75, R.C.M., 1947, as last amended by Chapter 186, Laws of 1955, authorizes the issuance of bonds for the erection of self-financing facilities at institutions controlled by the State Board

of Education. As the normal schools are institutions governed by the State Board of Education, the provision of this chapter of the code is available for the issuance of bonds to construct housing facilities at each of the institutions. Section 75-203, R.C.M., 1947, enumerates the revenue which may be pledged to the payment of the bonds and specifically named are "the proceeds or income from grants of land. The income from the lands designated in Section 17 of the Enabling Act comes within this latter category.

Section 75-1006, R.C.M., 1947, which was enacted as Chapter 180, Laws of 1893, authorized the State Board of Education to receive "in the name of the state normal school hereby established" the proceeds of the land granted to the state by Section 17 of the Enabling Act. The normal school referred to in this statute was the Montana State Normal School and this code section seemingly precludes Eastern Montana College of Education from participation in the income.

The restrictive limitation found in Section 75-1006, R.C.M., 1947, which makes available to Western Montana College of Education all of the income of the land grant must be considered in the light of legislative enactments pertaining to the allocation of land grant income. When Section 75-1006, R.C.M., 1947, became law, there was only one normal school at Dillon and of necessity all of the funds had to be used for the only normal school in the State of Montana. Section 17 of the Enabling Act specifically designated that the funds and income were to be used "for state normal schools." Thus, it is apparent that Congress anticipated that more than one normal school would be established in Montana. In the year 1925 Eastern Montana College of Education was established under Chapter 160, Laws of 1925, and it is not possible that either Congress or the Legislative Assembly of Montana contemplated that Eastern College of Education would be precluded from participation in the income from the normal school land grant. This is evident from the legislative appropriation since the year 1933 which divided the

income between the two institutions. Also the special bond law, Chapter 7, ex-Laws of 1933-34, expressed the legislative intent that Eastern Montana should receive benefit from the grant. A comprehensive law, Chapter 94, Laws of 1929, which is now Chapter 2 of Title 75, R.C.M., 1947, authorizes the State Board of Education to issue bonds for self-financing facilities of institutions under its control and Section 75-203, R.C.M., 1947, specifically grants the power to pledge to the payment of the bonds "income from grants of lands." This statute was recently amended by Chapter 186, Laws of 1955, and by this legislative expression recognized the broad power of the State Board of Education.

The case of *State ex rel. Blume vs. State Board of Education*, 97 Mont. 371, 34 Pac. (2d) 515, construed a statute which authorized building bonds, Chapter 7, ex-laws 1933-34. This act authorized the State Board of Education to erect one or more buildings for the Eastern Montana State Normal School and to issue bonds to accomplish the construction program. The Board was specifically authorized to borrow money and to pledge all the earnings of the institution, and one-half of all the income and interest derived from the land grant for normal schools. The opinion considered what is now sub-section 11 of Section 75-107, R.C.M., 1947, and quoted with approval from an earlier Montana case which construed this statute:

" \* \* \*

'We think \* \* \* that the legislature, in defining the powers and duties of the board of education, with a view of following the spirit and intention of the Act of congress creating the trust, intended that this board (of education) should be clothed with the special and exclusive power of executing it free from the limitations and restrictions of the Constitution as to the expenditure of the ordinary revenues of the state.'

\* \* \*

In view of what we have already said with reference to the income and interest from the proceeds of

the land grant, if we assume that any appropriation was attempted by this Act, it was entirely unnecessary to the consummation of the plan or the expenditure of the money.

\* \* \*

It is apparent from the above quoted case that an appropriation of the income of the land grant income is not necessary for the State Board of Education to pledge the income for the payment of housing facility bonds. However, the authority to pledge one-half of the income of the land grant found in Chapter 7, ex-Laws 1933-34, for the construction of buildings at Eastern Montana State Normal School was an allocation of one-half of the income for a period limited to the term of the bonds issued under the act it cannot be considered an allocation to Eastern Montana Normal School for future bond issues.

In the light of the history of these pertinent statutes, it must be concluded that the State Board of Education, under sub-section 11 of Section 75-107 and Section 75-203, R.C.M., 1947, as amended, has the authority to pledge the income from the normal school land grant in not only for the payment of bonds issued on behalf of Western Montana College of Education, but also for Eastern Montana College of Education. While repeals by implication are not favored, yet the courts will arrive at such conclusions if necessary to accomplish the legislative intent. In *State vs. Miller*, 69 Mont. 1, 220 Pac. 97, it was stated:

" \* \* \*

While repeals by implication are not favored, when two legislative enactments relating to the same subject matter are in conflict, and cannot be harmonized, the Act last enacted controls." (Citing cases.)

Chapter 2 of Title 75, R.C.M., 1947, the Dormitory Act, was enacted in 1929, after the establishment of Eastern Montana College of Education, and more than thirty years after the adoption of Section 75-1006, R.C.M., 1947, and must be construed as an implied repeal.

The necessity of resorting to the history of statutes to arrive at their meaning was recognized in the case of Fergus Motor Company vs. Sorenson, 73 Mont. 122, 235 Pac. 422, where the court said:

“It is also permissible, if not actually necessary, whenever the language of a statute is of doubtful meaning, for the court ‘to recur to the history of the times when it was passed and of the Act itself, in order to ascertain the reason as well as the meaning of particular provisions in it.’”  
(Citing cases.)

It is therefore my opinion that the State Board of Education has the power and authority to pledge one-half of the interest and income realized from the land grant received from the Federal Government under Section 17 of the Enabling Act for the payment of housing facility bonds at each of the two normal schools in the State of Montana which are Eastern Montana College of Education and Western Montana College of Education.

It is also my opinion that the pledge of such income is junior to the prior pledge for bonds heretofore issued.

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