

Opinion No. 93**Governor, Powers of —
Federal Surplus Property —
Civil Defense**

HELD: The Governor of Montana may, by Executive Order, authorize and direct the Donable Property Division of the Department of Public Instruction to acquire, warehouse, and distribute donable personal property to civil defense organizations of the State of Montana and its political subdivisions and instrumentalities, and to execute certifications and agreements required by the Federal Government.

November 21, 1956

Mr. William J. Ernst, Director
Donable Property Division
Department of Public Instruction
State Capitol Building
Helena, Montana

Dear Mr. Ernst:

You have requested my opinion upon the following question:

May the Governor of Montana, by Executive Order, authorize and direct the Donable Property Division of the Department of Public Instruction to acquire, warehouse, and distribute donable personal property to civil defense organizations of the State of Montana and its political subdivisions and instrumentalities, and to execute certifications and agreements required by the Federal Government?

The state agency for surplus property (known as the Donable Property Division of the Department of Public Instruction) was set up by Chapter 136, Laws of 1953, (Sections 82-3101 through 82-3104, R.C.M., 1947). Section 82-3101 provides that the agency shall have certain powers and authority:

“Administration Of The State Agency for Surplus Property. There is hereby created and established a Montana state agency for surplus property, which shall be administered by the state board

of education, and which shall be subject to the supervision and direction of the state superintendent of public instruction. The state superintendent of public instruction is authorized to appoint, fix the compensation of and prescribe the duties of such personnel as are needed to carry out the duties as hereinafter stated.”

Since the passage of the above quoted section, the Congress of the United States has authorized distributions of surplus property to the states for the purpose of furthering civil defense. (Public Law 655, 84th Congress, Approved July 3, 1956). Your question asks, fundamentally, whether the Governor of Montana may utilize this existing state agency to receive surplus Federal property to further the state civil defense program.

The Governor of Montana is given general direction and control over the civil defense agency of the State of Montana, and is specifically authorized to use the facilities of all existing state offices and agencies to carry out the purposes of the civil defense act (Chapter 13, Title 77, R.C.M., 1947).

Section 77-1306, provides:

“Civil Defense Duties Of The Governor. The governor shall have the general direction and control of the civil defense agency, and shall be responsible for the carrying out of the provisions of this act, and shall utilize the services and facilities of the existing officers and agencies of the state, and all such officers and agencies shall cooperate with and extend their services and facilities to the governor as he may request in the carrying out of the purposes of this act.”

Section 77-1311 specifically authorizes the Governor to accept any services, gifts, grants or loans offered by the Federal Government to the state. That section provides:

“Authority To Accept Services, Gifts, Grants, and Loans. Whenever the federal government or any agency or officer thereof, or

any person, firm, or corporation shall offer to the state, or through the state to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant, or loan, for purposes of civil defense, the state, acting through the governor, or such political subdivision, acting through its executive officer or governing body, may accept such offer and upon such acceptance the governor of the state or executive officer or governing body of such political subdivision may authorize any officer of the state or of the political subdivision, as the case may be, to receive such services, equipment, supplies, materials, or funds on behalf of the state or such political subdivision, and subject to the terms of the offer and the rules and regulations, if any, of the agency making the offer."

It is evident from a reading of these sections that the Governor has wide authority to advance the cause of civil defense in Montana by accepting property made available to the state by the Federal Government, and to provide for the handling of this property by existing state departments and agencies, such as the Donable Property Division of the State Department of Public Instruction.

It is therefore my opinion that the Governor of Montana may, by Executive Order, authorize and direct the Donable Property Division of the Department of Public Instruction to acquire, warehouse, and distribute donable personal property to civil defense organizations of the State of Montana and its political subdivisions and instrumentalities, and to execute certifications and agreements required by the Federal Government.

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