

**Opinion No. 15****Department of Agriculture—Mormon Crickets—Grasshoppers—  
House Bill No. 475**

**Held: The Department of Agriculture cannot expend any funds appropriated by House Bill No. 475 for the control of mormon crickets and grasshoppers for spraying activities conducted prior to July 1, 1957.**

May 22, 1957

Mr. Albert H. Kruse  
Department of Agriculture  
Helena, Montana

Dear Mr. Kruse:

You have presented the following inquiry to me for my opinion.

You state that the 1957 Legislative Assembly appropriated \$100,000 in House Bill No. 475 for the control of mormon crickets and grasshoppers with an effective date of July 1, 1957. The season for these pests is from May until the middle of July. You wish to know whether persons spraying in May and June of 1957 may be compensated by the state from this appropriation for their activities.

Prior to the passage of House Bill No. 475, the 1957 Legislative Assembly considered and killed House Bill No. 150. This bill provided for the creation of a Bureau of Agriculture Pest and Grasshopper Control. The sum of \$80,000 was to be appropriated for each year of the biennium and the act was to be effective on July 1, 1957. Immediately after this bill was killed, the same authors introduced Substitute House Bill No. 150.

Substitute House Bill No. 150 created a Bureau of Grasshopper and Mormon Cricket Control as part of the Department of Agriculture. The sum of \$200,000 was to be appropriated for the biennium and was to be used in part to reimburse individuals on a pro rata share for their aiding in the control of these pests. The bill was to be effective upon its passage and approval but was killed in the Senate Finance and Claims Committee on March 6, 1957.

In Chapter 76, Laws of 1949, the sum of \$100,000 was appropriated for the control of grasshoppers and Section 6 provided:

"An emergency is hereby declared to exist and this Act shall be in full force and effect from and after its passage and approval."

House Bill No. 475, an appropriation bill, stated in Section 1, paragraph 9:

"The appropriations contained in this act are intended to provide only necessary expenditures for the year for which the appropriation is provided . . ."

Section 2 of the bill provides in part:

"That the following sums . . . are hereby appropriated . . . for the period beginning July 1, 1957, and ending June 30, 1958."

House Bill No. 475 expressly provided that the expenditures may only be made for the fiscal year of July 1, 1957, to June 30, 1958. There was no provision made for payment of services rendered prior to July 1, 1957. The appropriation made is one-half the amount requested in Substitute House Bill No. 150 and \$60,000 less than the appropriation requested in House Bill No. 150.

The Legislature could have made this appropriation effective on its passage and approval and declared an emergency as it had in Chapter 76, Laws of 1949, *supra*. The Legislature not only failed to do this but cut the original appropriation by one-half from the requests made in House Bill No. 150 and Substitute House Bill No. 150. This Legislature also made the appropriation effective for only one year of the biennium.

In *State v. Marsh*, 196 N. W. 130, 132, 111 Neb. 185, the court determined whether funds from one biennium could be used to pay contractual obligations incurred in a preceding biennium. The court stated:

". . . it is beyond the power of the respondent state officials to apply the money appropriated for this biennium to the payment of debts made in a preceding one; and we add, that despite the urgency of the situation, the court cannot step aside from its function and invest state officials with such powers." See, also, *Harris v. Leslie*, 12 S. E. (2d) 538, 541, 195 S. C. 526.

In these two cases cited above, the court recognized an obligation of the state but refused to allow an allocation of funds from one biennium to pay debts incurred in another biennium. In our present situation there is not even an obligation of the state to pay for services rendered prior to July 1, 1957, since the state did not authorize any mormon cricket or grasshopper control from July 1, 1951, to July 1, 1957. During that interim no appropriation was made by the Legislature for such state activity. If any control of these pests was undertaken in that period it was done at the individual's expense.

The Legislative act is express in this instance and there is no other recourse than to state that the Department of Agriculture cannot expend any funds appropriated by House Bill No. 475 for the control of mormon crickets and grasshoppers for spraying activities conducted by individuals prior to July 1, 1957.

Very truly yours,  
FORREST H. ANDERSON  
Attorney General