

Opinion No. 88**National Guard—Armories**

Held: Funds appropriated to the Montana National Guard by HB 366, Laws of 1957 may be expended for planning of improvements at Fort Harrison which will be constructed with Federal funds.

December 22, 1958

State Board of Examiners
Capitol Building
Helena, Montana

Gentlemen:

My opinion has been requested upon a legal question arising from the following facts.

House Bill 366, Laws of 1957, appropriated \$126,000 to the adjutant general "for the sole purpose of constructing, under the provisions of Sections 77-415 through 77-420, RCM, 1947, as amended, facilities necessary for the administration and training of the Montana National Guard." At this time \$40,000 of this sum remains unexpended.

The question now at issue is whether this \$40,000 may be expended exclusively for planning of improvements at Fort Harrison which will then be built entirely with Federal funds. The "facilities" contemplated by House Bill 366 are those authorized by Sections

77-415 through 77-420, RCM, 1947. Facilities are defined by Section 77-416 as follows:

"The words 'facility' and 'facilities', and 'armory' and 'armories' include, insofar as permitted by said act of Congress and Federal law, building space required for the administration and training of any Montana national guard unit, component, or any organization affiliated therewith, and such additional space in such building for other purposes as may be agreed to by the state adjutant-general of Montana on behalf of the state of Montana. The 'Montana national guard' includes the Montana air national guard, its units, components or any organization affiliated therewith."

This section would appear to give wide latitude in the manner of construction to the adjutant general limited only by the limitations of the Federal act. However, the Federal act has a wider definition than the Montana act. The National Defense Act of 1950—Public Law 783, 64 Statutes at Large 831, defines "facility" as follows:

"7 (a) 'Facility' includes any interest in land, any armory or other structure together with any improvements thereto, and any storage or other facility normally required for the administration and training of any unit of any reserve component of the armed forces of the United States."

In (c) of Section 7 "reserve component" is defined to include all branches of the national guard.

In the proposed project the state funds will be expended exclusively for planning, since Federal funds may not be expended for this purpose. (NGB Pamphlet No. 7401, Headquarters Department of the Army and Air Force, National Guard Bureau, 1 April 1958). The state expenditures will be a great deal less than 25% of the over all cost of the project. Section 77-420 limits state participation in these projects to 25% or less.

It is apparent from the state and Federal acts that the proposed work is within the scope of the definitions of "facilities" in both the Federal and state acts, that money is available for the state's participation, and that the state's contribution will not exceed the limit provided in Section 77-420.

Planning is an integral part of every construction project and is included within its scope. Therefore, these plans are part of the over all construction job. The funds appropriated by House Bill 366 may legally be expended for this purpose.

Very truly yours,
FORREST H. ANDERSON
Attorney General