

Opinion No. 36

BEQUESTS; State Institutions; authority to accept—MONTANA SOLDIER'S HOME; Bequests; conditional bequests, power to accept—STATE INSTITUTIONS; Bequests; conditional bequests, power to accept—STATE INSTITUTIONS; Bequests; conditional bequests; fulfillment of conditions—Section 80-313, RCM, 1947—Section 91-105, RCM, 1947

Held: The State Soldier's Home is authorized to accept conditional bequests and the prescribed conditions must be fulfilled as far as possible.

October 23, 1959

Mr. A. L. Libra
Attorney at Law
First State Bank Building
Thompson Falls, Montana

Dear Mr. Libra:

You have requested my opinion whether the State Soldier's Home may accept a conditional bequest, and, if so, to what extent is it obligated to fulfill the condition.

Section 91-105, RCM, 1947, provides:

"The state of Montana, the university of Montana, the state normal college, the state orphan's home, the state school for the deaf and blind, the state school of mines, the state reform school, the soldier's home, the Montana state tuberculosis sanitarium, the state asylum for the insane, the state penitentiary, and any and all institutions now created or established, or which may hereafter be created or established, and supported in whole or in part by the state of Montana for any purpose, are hereby empowered and given the right to accept, receive, take, hold, own, and possess gifts, donations, grants, devises, or bequests of real or personal property from any source whatsoever; and said gifts, donations, grants, bequests or devises may be made direct to the state of

Montana, or in the name of any said institutions, or to any officer or board of said institutions; but in the event the same shall be made direct to any such institution, or to any officer or board of any such institution, such gift, donation, grant, devise, or bequest shall be construed as a gift, donation, grant, devise, or bequest to the state of Montana, and shall be administered and used for the particular purpose for which the same was given, donated, granted, bequeathed, or devised; and in the event no particular purpose is mentioned in such gift, grant, devise, or bequest, then the same shall be used for the general support, maintenance, or improvement of such institution by the state of Montana."

Section 80-313, RCM, 1947, states:

"Said board of managers shall have the power, on behalf of the state, to accept donations of land, money, or other valuables by gift, bequest, or otherwise. All titles to land and improvements thereon shall be vested in the name of the state for the use of said soldier's home, so long as the same may be necessary, to revert to the state when the necessity for such home no longer exists."

The above provisions clearly empower the State Soldier's Home to receive gifts by testamentary bequest.

The language of these sections contains no requirement that state institutions receive gifts free of all conditions. In fact, the legislature clearly intended that gifts to state institutions be used for their particular purpose and in accordance with the declared intentions of the donor. Section 91-105, *supra*, states in part:

". . . but in the event the same shall be made direct to any such institution, or to any officer or board of any such institution, such gift, donation, grant, devise, or bequest shall be construed as a gift, donation, grant, devise, or bequest to the state of Montana, **and shall be administered and used by the state of Montana for the particular purpose for which the same was given . . .**" (Emphasis added.)

It is therefore my opinion that the State Soldier's Home is authorized to accept conditional bequests, and that the prescribed conditions must be fulfilled so far as is reasonably possible.

Very truly yours,
FORREST H. ANDERSON
Attorney General