

Opinion No. 24

APPROPRIATIONS; Bills; amend substantive law—FEES; Regulatory boards; deposit with State Treasurer—FUNDS; Regulatory boards; deposit with State Treasurer—LEGISLATURE; Appropriation bills; amend substantive law by—REGULATORY BOARDS; Funds; deposit with State Treasurer—HOUSE BILL 463, Laws of 1961—Section 23, Article V, Montana Constitution.

Held: Certain regulatory boards which are allowed by law to collect fees must deposit such fees with the State Treasurer as trust funds.

September 14, 1961

Mr. Emil Schoenholzer, Secretary
Montana State Board of Pharmacy
P. O. Box 2034
Billings, Montana

Dear Mr. Schoenholzer:

You have asked me whether House Bill No. 463 changed the procedure for the handling of the funds of certain regulatory boards. That bill contains the following provision which gives rise to your question:

"All other regulatory boards which are allowed by law to collect fees shall deposit such fees with the State Treasurer as trust funds."

Specifically the question is whether this provision, included in a general appropriation bill, amends the substantive law which allows the regulatory boards to handle their own funds. It is my opinion that this appropriation bill does amend the substantive laws. Regulatory Boards must now transfer their funds to the State Treasurer to be drawn upon as other public funds. Substantive legislation may be amended by provisions in an appropriation bill. (*N.L.R.B. v. Thompson Products*, C.C.A. 9, 141 F. 2d 794; *Bowles v. Sunshine Packing Corp. of Pa., D.C. Pa.*, 5 F.R.D. 282; *Taylor v. Kjaer*, 171 F. 2d 343, 84 U.S. App. D.C. 183).

There remains the question of whether the portion of the appropriation bill quoted, *supra*, fails to comply with the constitutional requirement of Section 23 of Article V of the Constitution of Montana which provides:

"No bill, except general appropriation bills, and bills for the codification and general revision of the laws, shall be passed containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed."

It is my opinion that, although the title of House Bill 463 did not contain any mention of the transfer of funds to the State Treasurer, it is nevertheless constitutional. The Montana Supreme Court, in deciding the same question, in a case with similar facts, held that "So long as incidental provisions of an appropriation bill are germane to the purposes of the appropriation it does not conflict with any constitutional provision." In *Davidson et al v. Ford*, Gov. 115 Mont. 165, the court went on to say:

"We think this point is dealt with in an able manner by the Supreme Court of New Mexico, whose Constitution contains provisions much the same as our sections . . . That court, having under consideration the identical question involved here, said . . . 'To sustain the contention that the general appropriation bill

should contain nothing, save the bare appropriations of money, and that provisions for the expenditure of the money or its accounting, could not be included therein, . . . would lead to results so incongruous that it must be presumed that the framers of the Constitution had no such intent in the adoption of the restrictions referred to. . . ."

In the Montana case, *supra*, there were many other arguments presented by counsel urging that the portion of the bill relating to transferring funds to the State Treasurer be declared unconstitutional, but the arguments were not persuasive with the court.

It is therefore my opinion that House Bill No. 463 is constitutional and you are required to transfer your funds to the State Treasurer to be disbursed as other public funds upon warrants drawn upon the funds.

Very truly yours,
FORREST H. ANDERSON
Attorney General