

Opinion No. 7

**APPROPRIATIONS; Legislature, may appropriate funds for own operation when deficit exists—LEGISLATURE; Powers; appropriate moneys for own operation when deficit exists—
ARTICLE XII, Section 12, Montana Constitution.**

Held: Legislature may appropriate moneys for its own operation when deficit exists in the general fund.

January 4, 1961

Honorable Clyde L. Hawks
Speaker of the House of Representatives
State Capitol Building
Helena, Montana

Dear Mr. Speaker:

You ask my opinion regarding the constitutionality of House Bill No. 1 which proposes to appropriate moneys to defray the expenses of the current legislative assembly.

You state that it has been reported to the House of Representatives that a deficit presently exists in the state general fund, and in view of that deficit you query whether Section 12, Article XII of the Montana Constitution prohibits the legislature from appropriating money to carry on its functions.

Section 12, Article XII provides:

"No appropriation shall be made nor any expenditures authorized by the legislative assembly whereby the expenditures of the state during any fiscal year shall exceed the total tax then pro-

vided for by law, and applicable to such appropriation or expenditure, unless the legislative assembly making such appropriation shall provide for levying a sufficient tax, not exceeding the rate allowed in section nine (9) of this article, to pay such appropriations or expenditures within such fiscal year. This provision shall not apply to appropriations or expenditures to suppress insurrection, defend the state, or assist in defending the United States in time of war. No appropriation of public moneys shall be made for a longer term than two years."

This provision was before the Montana Supreme Court in *State ex rel. Tipton v. Erickson*, (93 Mont. 466, 19 Pac. (2d) 227) a case involving a problem analogous to the one you present.

In that case the plaintiffs sought to enjoin the state board of examiners from issuing bonds to discharge outstanding general fund warrants. Issuance of the bonds had been authorized by the legislature in order to amortize a warrant indebtedness which had been accumulating for a period of about ten years. The plaintiffs contended that the legislature failed to consider the outstanding warrant indebtedness at the time they made their appropriations for the general government. As a consequence, they claimed, expenditures did not correspond with anticipated revenue as required by Section 12, Article XII of the Constitution, so the appropriations, it was contended, were unconstitutional. Our Court rejected that contention with this statement:

"Here it appears from the petition on file that the total of all appropriations made by the last Legislative Assembly is well within the reasonably anticipated income of the state for the period covered; and it is asserted that these appropriations are unconstitutional only because of the existence, at the time they were made, of the overdraft of outstanding warrant indebtedness of the state. This contention is without merit, for the reason that it was never within the contemplation of the framers of our Constitution that any prohibition incorporated in that instrument should bring the state government to an impasse; and if the provision now under consideration should be interpreted to bring about a situation where the state government must cease to function, and where the lives, liberties, and property of the people must go unprotected, that provision must yield to the paramount purpose of the Constitution to create and perpetuate a state government for the protection of its people in their inalienable right to life, liberty, and the pursuit of happiness. . ." (*State ex rel Tipton*, supra, p. 474.)

The reason for the rule stated by the court is present in your situation. Basically, warrant indebtedness and a deficit are the same. Each represents an obligation that will have to be paid. And the threat to government, although possibly not as alarming, is incipient. Each Legislative Assembly is an entity unto itself and must be free to function. Funds are essential for that purpose. The obtaining of such

funds cannot be prevented by events and circumstances that preceded your existence. To hold that a Legislative Assembly cannot appropriate money for its own needs because a surplus has not been left over from the revenues anticipated by preceding legislatures, acting in good faith, is more than absurd—it is a solicitation to anarchy.

This conclusion is justified by the further fact that a legislature has the inherent power to effectuate its existence. This has been held respecting the judicial branch of government (*State ex rel. Schneider v. Cunningham*, 39 Mont. 165, 101 Pac. 962) and on principle is true of the legislature. Indeed it is implicit in the constitutional command that you meet every two years (Article V, Section 6), and in the constitutional grant vesting in the assembly the legislative power (Article V, Section 1).

It is therefore my opinion that any deficit in the general fund which may exist does not render House Bill No. 1 unconstitutional.

Very truly yours,
FORREST H. ANDERSON
Attorney General