

Opinion No. 20

APPROPRIATIONS; Line Item Appropriation; board of examiners cannot decrease—STATE BOARD OF EXAMINERS; Powers; line item appropriation; no power to decrease—LEGISLATURE; Appropriations; line items cannot be changed by officials —LEGISLATURE; Powers; salaries; set by line item

Held: It is beyond the powers of the State Board of Examiners or any other civil executive board to reduce the sum to be expended for the salary of a particular State officer when the salary has been fixed by a line item in the legislative appropriation.

August 8, 1959

Mr. M. W. McEnaney
Executive Clerk
State Board of Examiners
Helena, Montana

Gentlemen:

You have requested my opinion on the following question: What power has a State executive board to change the salary of any State

officer when that salary has been fixed by a line item in the legislative appropriation?

As I understand the facts in the present instance, your question does not involve what must be done if the legislative appropriation is insufficient to meet a liability already incurred by a valid and binding contract. The problem is, rather, whether an executive board ordinarily having the statutory power to fix salaries of persons under the jurisdiction of that board may allocate for the salary of such a person less than the amount appropriated for that salary in a line item appropriation by the legislature.

We need not be concerned with the type of statutory authorization to the board to fix salaries since the question here involved is a constitutional one and has been so considered by our Supreme Court. The fundamental question, broadly stated, is whether an executive board has the power to curtail the expenditure of moneys directed to be spent under a line item appropriation by the legislature.

This, of course, does not involve questions arising from a lump sum appropriation for a general purpose such as appropriations for "operations," "salaries and expenses," and "capital and repairs." It has to do only with specific appropriations for a defined and limited purpose, in this case a salary appropriation for a named officer.

This question in a slightly broader form was before our Supreme Court in the case of *State ex rel. Jones v. Erickson*, 75 Mont. 429, 244 Pac. 287. In that case the legislature had appropriated all of the proceeds of a one and one-half mill levy for the support, maintenance, and improvement of the four units then comprising the University of Montana. The State Board of Examiners subsequently reduced the amount to be available to the University units and appropriated the difference to the use of the Agricultural Experiment Station and the Agriculture Extension Service, for which moneys had already been appropriated from the general fund by the legislature. The power of the Board of Examiners to so reduce the amount appropriated to the University units was questioned in an injunction action and the Supreme Court held that the Board of Examiners did not have the power to so reduce the amount specifically appropriated by the legislature. The court said:

"While this board is given supervision and control over the expenditures of moneys appropriated or received for the use of the educational institutions of the state, this power does not authorize an arbitrary reduction by the board of valid appropriations and authorized expenditures from available funds applicable to such appropriations and expenditures which have been duly made and authorized by the legislative assembly and have received the approval of the governor. Such attempted substitution of the judgment of executive officers of that of the legislative body constitutes a usurpation of legislative functions which cannot be

permitted under our constitutional division of state government into its three co-ordinate departments; the authority to do so was denied the governor in the exercise of his veto power in *Mills v. Porter*, 69 Mont. 325, 35 A.L.R. 592, 222 Pac. 428, and there is much less reason for sustaining the exercise of such power by an executive board. When the legislative assembly has expressed its solemn judgment as to the amount necessary for the support and maintenance of an institution for the fiscal year, and in doing so has kept within the restrictions imposed by the Constitution both as to such general appropriations and its appropriations generally for such year, the executive and judicial departments of the state must bow to that judgment."

This decision is directly in point here since in the case here involved the money was appropriated to a distinct, specific, and limited purpose. The doctrine of the *Jones* case applies. It is, therefore, beyond the powers of the State Board of Examiners or any other Civil Executive State Board to reduce the sum to be expended for the salary of a particular State officer when the salary has been fixed by a line item in the legislative appropriation.

Very truly yours,
FORREST H. ANDERSON
Attorney General