

Ir. Re: Amendment to Sec. 11072, Page 283, Session Acts Mo. 1933
relating to Reforestation.

12-5
December 5, 1933



Hon. C. M. Buford
Senate Chamber
Jefferson City, Missouri

Dear Senator:

I herewith enclose to you a copy of suggested change
in Title and in emergency clause to House Bill No. 8.

Title 16. United States Code Annotated--Section
500, provides as follows:

"Twenty five Per centum of all moneys
received during any fiscal year from each
national forest shall be paid at the end
of such year by the Secretary of the
Treasury to the State in which such national
forest is situated, to be expended as the
State legislature may prescribe for the
benefit of the public schools and public
roads of the county or counties in which
such national forest is situated. When
any national forest is in more than one
state or county the distributive share to
each from the proceeds of such forest
shall be proportional to its area therein.
There shall not be paid to any state for
any county an amount equal to more than
forty per centum of the total income of
such county from all other sources."

I find no amendment of the above set forth Federal
Statute. This act of Congress was construed by the United States
Supreme Court in the case of King County vs. Seattle School
District No.-1. 263 U. S. 361. (Date Decision Dec. 3, 1923). You
will observe the language of the act directs twenty-five per cent
of all money received from each forest reserve during any fiscal
year shall be paid at the end thereof by the Secretary of the
Federal Treasury to the State in which the reserve is situated and
then the act says:

"To be expended as the State* * * Legislature may prescribe for the benefit of the Public Schools and Public Roads of the county or counties in which the forest reserve is situated."

The Statute of the State of Washington directed the State Treasurer to turn over to the County Treasurers the amounts of such money belonging to the respective counties: And provided that:

"County Commissioners of the respective counties to which the money is distributed are hereby authorized and directed to expend said money for the benefit of the Public Schools and Public Roads thereof, and not otherwise."

A part of the time the County Commissioners paid one half of the money to Schools and one half to the Road fund. But from 1909 to 1915 directed all the money be assigned to the Road and Bridge Fund. Suit was begun by the Seattle School District in the Court to compel the County Commissioners to divide the money equally between the schools and roads and divide the half given the schools on basis of attendance in all the districts of the county. The Court held of course the Federal District Court had jurisdiction because the right and title to the money was claimed under a Federal Statute. The Court said:

"There is involved the question whether the act permits the money so received by the county to be expended by the County Commissioner as directed by the State Legislature or requires an equal distribution annually for the benefit of Public Schools and Public Roads of the county.* * * When turned over to the State the money belongs to it absolutely. There is no limitation upon the power of the Legislature to prescribe how the expenditure shall be made for the purposes stated, though by the Act of Congress 'There is a sacred obligation imposed on its public faith'* * * No Trust for the benefit of the appellee (The Seattle School District) is created by the grant. But assuming the moneys paid over to the State are changed with a trust that there shall be expended

annually one half for schools and one half for roads, the Appellee has no right to enforce the Trust. Congress alone can inquire into the manner of its execution by the State. * * * The act does not direct any division of the money between schools and roads. Its language above quoted indicates an intention on the part of Congress that State in its discretion may prescribe by legislation how the money shall be expended. No distribution to the Appellee or any other school district is required. The Public Schools and the Public Roads are provided and maintained by the state or its subdivisions and the moneys granted by the United States, "are assets in the hands of the State to be used for the specified purposes as it deems best" * * * Equal division annually between the two purposes is not required or contemplated by the act. The Appellee has no standing to object to the distributions made by the County Commissioners."

Your proposed amendment gives all the money to the Schools. Under the above cited case this is legal. I believe the body of your bill is legal. I am inclined to the opinion the Court would sustain the "title to your bill and also the emergency clause." Perhaps my suggestions would strengthen the "Title and the emergency clause."

Very respectfully,

EDWARD C. CROW
Assistant Attorney General.

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