

ELEEMOSYNARY INSTITUTIONS: Interest received on "patients fund" should be paid to State Treasurer for credit of fund of State Eleemosynary Institutions.

June 17, 1941

673



Mr. Ira A. Jones, President
Board of Managers
State Eleemosynary Institutions
Jefferson City, Missouri

Dear Mr. Jones:

We are in receipt of your request for an opinion under date of June 16th, wherein you state as follows:

"You gave us an opinion on this matter over the telephone, but we would like a written opinion if possible.

"From the patients fund we have an accumulation of \$412.15 interest. We would be very glad to have the Board's decision on the disposition of same, whether or not this should be turned in as steward's sales or could it be used in amusement fund for the institution? This accumulative interest is from July 1, 1937 up to date."

We have heretofore rendered your Department two opinions under date of December 28, 1933, and December 9, 1934, respectively, with reference to the disposition to be made of moneys accumulated in the "patients fund."

We were advised in a letter from your Department under date of November 9, 1934, that this fund was accumulated from money taken from patients at the time of their admission, and placed to their credit, and by money left

by relatives and friends for their spending account. As the years went by patients died leaving balances in their accounts, or left the institution without drawing their balances, and the institution was unable to locate the relatives for the purpose of making refunds. These accumulated funds were then used by the institution for taking patients to circuses, to fairs, and for Christmas fruits and cards.

The gist of the above two opinions were that the funds were to be used by the steward in accordance with the wishes of the donors, but if upon the death of the patient or his release, the relatives could not be located, moneys were to be paid to the State Treasurer to the credit of the State Eleemosynary Institutions in accordance with Sections 9300, 9365 and 9366, R. S. Mo. 1939.

The question now presented is whether interest accumulated from said fund should be turned in as steward's sales or used in an amusement fund for the institution?

In the case of Havender v. Brodbeck, 83 Misc. 9, 1. c. 11, 144 N. Y. S. 418, the court said:

"Ordinarily 'interest follows the principal, as the shadow does the substance.' Hatcher v. Lewis, 4 Rand. (Va.) 152, 157; Woerz v. Schumacher, 161 N. Y. 530, 56 N. E. 72."

And in the case of Board of Education v. City of Racine, 238 N. W. (Wisc.) 413, 1. c. 414, the Supreme Court said:

"Title to the accretions of the fund usually follows title to the fund, the owner of one generally being the owner of the other."

June 17, 1941

Again in the case of United States v. Mosby, 133 U. S. 273, 10 Sup. Ct. 327, 33 L. Ed. 625, l. c. 630, the Consul of the United States at Hong Kong had deposited certain public moneys as a trustee. The court, in holding that although he was not required to put the funds out at interest, yet if he did the accretion belonged to the government, said:

"The moneys are stated to be 'public moneys,' in respect to which the consul was a trustee, and any interest which he received on the funds belonged to the United States. He was not required to put the funds out at interest, but if he did so the accretion belonged to the government."

Under the above decisions interest is an incident of the principal and title to the same would follow title to the fund. Thus, if the institution must turn over the principal, the conclusion necessarily follows that they must turn over interest as well to the State Treasurer.

From the foregoing we are of the opinion that interest received by the institution on moneys held by it under a "patients fund," should not be turned in as steward's sales or used in an amusement fund for the institution, but should be deposited with the State Treasurer as moneys received by the institution in the manner prescribed for the "patients fund" in the opinion rendered under date of December 19, 1934, to your Department.

Respectfully submitted,

MAX WASSERMAN
Assistant Attorney-General

APPROVED:

VANE C. THURLO
(Acting) Attorney-General
MW: EG