

STATE PURCHASING AGENT: RE: The money received from the sale of  
STATE PENITENTIARY: trucks used by the industries of the  
state penitentiary should be deposited  
in the state treasury to the credit  
of the revolving fund of the penitentiary.

July 12, 1946



7/17

Mr. William Smith  
State Purchasing Agent  
Capitol Building  
Jefferson City, Missouri

Dear Mr. Smith:

This will acknowledge receipt of your letter of recent date requesting an opinion of this department as to the following:

1. Should the State Purchasing Agent turn over moneys, received from the sale of goods, to the State Treasury for the latter's determination of the proper fund into which the money should be placed?
2. To what fund should the proceeds from the sale of three trucks, used by the industries of the state penitentiary, and which were purchased out of the penitentiary revolving fund, be placed?

Section 15, Article IV of the Constitution provides, in part, as follows:

"Sec. 15. State Treasurer--Duties--Custodian of all State Funds--State Funds Defined--State Depositories--Limitation on Duties.--

"\* \* \* \*.Immediately on receipt thereof the state treasurer shall deposit all moneys in the state treasury to the credit of the state in banking institutions selected by him and approved by the governor and state auditor, and he shall hold them for the benefit of the respective funds to which they belong and disburse them as provided by law. \* \* \* \*"

Section 34 of Senate Bill No. 237, passed by the 63rd General Assembly and approved by the Governor, which became effective on July 1, 1946, provides, in part, as follows:

"Section 34. All moneys now belonging to or that may at any time hereafter belong to the state, that is now in the state treasury or that hereafter may be required by law to be paid into the treasury for any purpose whatever, shall immediately on receipt thereof be deposited by the treasurer to the credit of the state, for the benefit of the fund to which such moneys respectively belong, \* \* \*"

We think the above provision of the Constitution and the recent bill setting up the duties of the state treasurer clearly indicate that the state treasurer is to determine the proper fund to the credit of which moneys are to be placed. That part of Section 15, Article IV of the Constitution, quoted above, specifically refers to the duties of the state treasurer and provides that he shall hold money for the benefit of the funds to which it belongs. The Constitution thus implies that he must determine the funds to which moneys belong. There is no constitutional or statutory provision stating that the determination of the proper fund should be made by any other officer, and if the state treasurer is to "hold" money for the proper funds, he would, therefore, be required to determine which was the proper fund.

This is supported by the statutory provision of Senate Bill No. 237, which provides that, on receipt in the state treasury, moneys shall be placed to the benefit of the fund to which they belong. This provision makes it clear that the moneys are to be placed in the respective funds after they are received in the state treasury. At that time they are within the custody of the state treasurer and it follows that he is the proper officer to determine the fund to which moneys belong, since no other officer has any control over them at that time. We think, therefore, that the state treasurer should determine the funds to the credit of which the money should be placed.

There is no statute which specifically indicates where the money, received from the sources indicated in the second question, is to go. We have found no cases, either in Missouri or in other states, which deal with the narrow question presented for our determination. We must, therefore, turn to the statutes and the cases dealing with subjects which are closely akin to the matters which we are herewith concerned.

Since the trucks were purchased with money which constituted a part of the revolving fund of the penitentiary, the statutes dealing with that fund are the most pertinent to the question raised. Since they do not specifically indicate that moneys of this type are to go in the revolving fund, we must look to the purpose of these statutes to determine the second question. In determining the purpose and intention of statutes it is proper that

we consider the titles to the acts in which the statutes were enacted and also the history of the passage of the statutes. Thomas v. Buchanan, 51 S. W.(2d) 95, 330 Mo. 627; Artophone Corp. v. Coale, 133 S. W.(2d) 343, 345 Mo. 344; Coates and Hopkins Realty Co. v. K. C. Terminal R. S. Co., 43 S. W.(2d) 817, 328 Mo. 1118; Cummins v. K. C. Public Service Co., 66 S. W.(2d) 920, 334 Mo. 672; Rust v. Mo. Dental Board, 155 S. W.(2d) 80, 348 Mo. 616.

The revolving fund of the penitentiary was first created in 1903. Section 5 of an act approved March 13, 1903, Laws of Mo. 1903, page 24, read as follows:

"Sec. 5. There is hereby appropriated out of any funds in the state treasury not otherwise appropriated the sum of one hundred and twenty-five thousand dollars (\$125,000), which shall be known as the 'Revolving Fund,' which fund, or so much thereof as may be necessary, shall be used only for the purpose of purchasing raw material required in the manufacture of twine and for the purpose of carrying on the business of manufacturing, handling and marketing the said twine until disposed of according to the provisions of this act; and the money in said 'Revolving Fund' shall be paid by the treasurer of the state upon warrants issued by the auditor of the state upon verified vouchers of the said warden."

The purpose of the revolving fund, at its inception, was thus to provide for carrying on the business of the manufacture of twine by the penitentiary. The fund was to be used in connection with that function of the penitentiary.

In 1917 the Legislature provided for the continuance of the revolving fund. Section 128, Laws of Mo. 1917, page 187, read as follows:

"Sec. 128. 'Revolving fund'--how used.-- The account or fund heretofore provided for by law, and known as the 'revolving fund' shall continue to be maintained and known as the 'revolving fund,' which fund, or so much thereof as may be necessary, shall be used only for the purpose of purchasing raw material, machinery or other equipment or in the erection of buildings or making other improvements in plants in connection with the industries carried on or to be carried on in said penitentiary or on the farm or lands mentioned in section 10 hereof or elsewhere; and in the manufacturing, handling and marketing of articles so produced

until disposed of, according to the provision of this act; and the money in said 'revolving fund' shall be paid by the treasurer of the state upon warrants issued by the auditor of the state upon verified vouchers of said board."\* \* \* \* \*

The title to the bill enacting this section states that one of the subjects of the bill is the "providing for continuing the 'revolving fund' for use of said industries and appropriation for said fund". Considering the purpose of the original act creating the revolving fund and the title to the bill for continuing the fund, it is, we think, clear that the Legislature intended that the revolving fund, as extended in 1917, should be used for the purpose of all the industries of the penitentiary. The 1917 statute is the last legislative expression on the subject, and is the present section 9097, R. S. Mo. 1939.

Section 9097, R. S. Mo. 1939, calls the fund referred to a "revolving fund". It is interesting to note the nature of a revolving fund. In *Kieldsen v. Barrett*, (1931 Idaho) 297 Pac. 405, an enactment of the Idaho Legislature provided that money coming into the possession of the state from the sale or rental of lands granted to the state of Idaho by the United States for the support of the common schools and from the sale or rental of lands acquired by the state under foreclosures of mortgages taken as security for moneys loaned out of the public school endowment fund, were to be placed to the credit of the farm mortgage fund in the amount that the latter fund had been formerly decreased. The farm mortgage fund was referred to by the court as a revolving fund which was for the purpose of paying delinquent taxes and expenses of mortgage foreclosures on land securing farm loans held by the state. To the extent that the farm mortgage fund was drawn on, it was to be reimbursed when collections were made on loans or when the mortgage was foreclosed. The principal of the loan was advanced from the public school endowment fund. The contention of the plaintiff in the case was that all money realized from the foreclosure of the mortgages was to be placed in the public school endowment fund and that the statute placing a part of this money in the farm mortgage fund was unconstitutional. The court held the statute constitutional. The fact that the court called this type of fund a revolving fund shows that money paid out of a revolving fund is expected ultimately to return to that fund. The court summed up this theory in its opinion at l. c. 407:

"The same answer will apply to the state's reimbursing the fund by means of rentals

etc. It has already received from the revolving fund advances equal to all it is required to return, and is just handing back to the true owner that which for a time it has been permitted to use for its own accommodation or profit. \* \* \*

We think the purpose and the nature of the revolving fund which we are here considering would be compromised and violated if the money from the trucks is not returned to the fund from whence it came. This is true because it is not inconceivable that the continued depletion of the revolving fund by the purchase of equipment, such as the three trucks here in question, without returning money realized from the sale of this equipment, might ultimately lead to the fund being extinguished. This result might be reached, even though we assume that the industries will continue to make a profit on the sale of their goods, for the reason that these profits would have to be large enough to allow for the purchase of the entire equipment of the industries out of these profits alone. Otherwise, the amount in the fund would gradually decline. The industries of the penitentiary are an important function of that institution and it is important to the state that the industries continue to function properly. Therefore, we think it would be contrary to the intention of the Legislature, in setting up the revolving fund and providing for the industries of the penitentiary, that there should be an depletion of the revolving fund except that which is absolutely necessary for the functioning of the industries and that, under this theory, the money which is realized from the sale of an article purchased out of the revolving fund should be returned to that fund.

#### CONCLUSION

It is, therefore, the opinion of this department that, (1) The State Treasurer holds the authority to determine the fund to which moneys placed in the state treasury should be credited. (2) The proceeds from the sale of three trucks, used by the industries of the state penitentiary and which were purchased out of moneys of the revolving fund of the penitentiary, should be placed in the state treasury to the credit of the said revolving fund.

Respectfully submitted,

APPROVED:

SMITH N. CROWE, JR.  
Assistant Attorney General

J. E. TAYLOR  
Attorney General

SNC:mw