

In re: Transfer of funds by treasurer from state interest fund to general revenue fund. 11496 P 114 P 114

February 27, 1933 ✓



Hon. Forrest Smith,
State Auditor,
Jefferson City, Missouri.

Dear Sir:-

You have written me the following letter:

"In 1924, the Fund Board transferred \$110,081.53 from the State Revenue Fund to the Interest Fund, and in 1925 they transferred \$27,945.98 from the Revenue Fund to the Interest Fund. The Revenue Fund has never been repaid.

Please advise if the Fund Commissioner has authority to transfer back to the Revenue Fund from the interest Fund this amount of money which was borrowed from the Revenue Fund."

Section 11496, R. S. Mo. 1923 relating to duties of Fund Commissioners provides,

"It shall be the duty of the fund commissioners, * * * before the interest on bonded indebtedness of the state falls due--or before the maturity of any state bonds, or the date when option bonds of the state are to be paid--to draw their requisition on the state auditor for the amount necessary to pay such interest on bonds, and the necessary expenses to be incurred in transmitting such money; whereupon the state auditor is required to draw his warrant upon the state treasury therefor in favor of the president of the board of fund commissioners payable out of the current appropriation made by the general assembly for the state interest fund or state sinking fund as the case may be; and if there is not sufficient money in the treasury belonging to such funds to pay such warrant, then the deficiency should be paid out of any other moneys in the treasury belonging to the general revenue fund."

This statute did authorize the transfers made in 1924 and 1925 from the state revenue fund to the interest fund.

I fail to find any constitutional or statutory authority that would in my opinion authorize you to take from the interest fund the amounts transferred thereto as above set forth, in 1924 and 1925. This interest fund is a constitutional fund and it was the intention, in my opinion, that when money goes into the interest fund that it should be applied to that purpose only.

The only theory upon which legislative act might be based to authorize the return of this money drawn out from the revenue fund in 1924 and 1925 would, in my opinion, be that the constitutional intent to have the interest fund kept intact and no withdrawals therefrom, should be applied only to money raised by taxation for the interest fund but I can find no decision of our courts upon this question and I am not even prepared to say that a legislative act if passed, would authorize you to transfer from the interest fund back to the state revenue fund the amount of moneys borrowed from the revenue fund in 1924 and 1925.

Very truly yours,

EDWARD C. CROW

APPROVED:

ROY McKITTRICK
Attorney-General

ECC/mh