

APPROPRIATION--"Egg-Dairy Products Inspection" paid out of general revenue fund and all licenses and fees derived by virtue of such inspection to go into general revenue.

HB 49 Laws 33

SB 124 Laws 33

October 5, 1933.

FILED

10-17

Honorable J. C. Breshears,
Commissioner,
State Department of Agriculture,
Jefferson City, Missouri.

Dear Mr. Breshears:

Your letter of September 13, 1933 has been received in which was contained a request for an opinion as follows:

"This department hereby requests your opinion on Section 5 of House bill 549, page 66, Laws of Missouri, "Egg-Dairy Products Inspection", as to whether it was the intent and action of the Legislature to group the three kinds of license fees into one fund, setting up a fund from such earned fees for the inspection service of the 1933-34 biennium.

Senate bill No. 42 (page 166, Laws of Missouri) transferred the Egg Law to the Department of Agriculture. Senate bill No. 46 (page 171, Laws of 1933) transferred the Milk-cream Station Law to the Department. Senate bill 15 (page 253, Laws 1933) transferred the Ice Cream Law to this Department.

The Egg-Ice Cream and Cream-Milk Station license money and inspection are dependent upon this appropriation being available dependent upon the money being earned before being spent, and if this money is not temporarily segregated into a special fund, it means that the inspection service can not be started and continued during the shortage of general revenue. Without inspection, the licenses can not be honorably and legally collected. It is a service and a revenue proposition, if we see it rightly.

If there is to be no inspection, the State should not even so much as try to collect the license money. The new State Department of Agriculture is about ready to start its inspection service, which is so generally dependent upon the availability of the license fees under this appropriation that our work will be paralyzed, except as this money shall be available from earnings, since we consider that the Legislature set up a fund for this purpose.

While it may be superfluous information, as to this inquiry, but we beg leave to list the earnings from these three license laws for 1931-32 for the full 24 months thereof, as follows:
Egg License, \$58,946.00; Milk-Cream Station License, \$11,752.00;
Ice Cream License, \$15,182.00; TOTAL \$85,880.00.

Please bear in mind that the appropriation made against the above licenses is only \$37,800 for 1933-34.

Not only will the inspection service be hampered, but it will embarrass the clerical work necessarily related thereto."

The narrow question presented by your request is if the appropriation of 1933 for Egg-dairy Products Inspection (Laws 1933, page 66, Section 5, such section being hereinafter referred to as "the appropriation act") is to be paid out of the general revenue fund of this state or out of some special fund arising from licenses and fees collected in connection with such inspection service.

This question hinges on the proper construction of the appropriation act which is as follows:

"Sec. 5. Egg-Dairy Products Inspection.--There is hereby appropriated out of the state treasury, chargeable to the general revenue fund, for the years 1933 and 1934, the sum of thirty-seven thousand, eight hundred dollars (\$37,800.00), to pay salaries, wages and per diem, and other general expense of the State Department of Agriculture and Commissioner of Agriculture, for the inspection of eggs and dairy products, from licenses and fees collected from milk and cream station licenses provided in article 5 of chapter 87 of the Revised Statutes of 1929, egg licenses and fees provided in article 4 of chapter 93 of the Revised Statutes of 1929, and the ice cream licenses and fees provided in article 5 of chapter 93 of the Revised Statutes of 1929, as follows:

A. Personal Service:

For salaries of not to exceed eight inspectors at not to exceed one hundred twenty-five dollars (\$125.00) per month each, and other needful employees of the Department of Agriculture - - - - - \$18,000.

B. Additions:

Operative and transportation equipment, including office furniture and equipment - - - - - 1,800.

D. Operation:

General expenses, including communication, printing and binding, transportation of things, travel, stationery and office supplies - - - - - 18,000.

Total, State Department of Agriculture \$37,800.00"

However, this question of construction will require a brief analysis of the revenue system of this state, and of the statutes providing for egg and dairy products inspection and fees therefrom and such analysis will consist of

two parts, I, disposition of fees prior to the appropriation act, and II, disposition of fees by virtue of the appropriation act.

I.

DISPOSITION OF FEES

(A) FEES COLLECTED MUST BE DEPOSITED IN STATE TREASURY

The Constitution of Missouri, Article IV, Section 43, provides in part as follows:

All revenues collected and moneys received by the state from any source whatsoever shall go into the treasury, and the General Assembly shall have no power to divert the same, or to permit money to be drawn from the treasury, except in pursuance of regular appropriations made by law. * * * *"

The Constitution of Missouri, Article X, Section 15, provides in part as follows:

"All moneys now, or at any time hereafter, in the State treasury, belonging to the State, shall, immediately on receipt thereof, be deposited by the Treasurer to the credit of the state for the benefit of the funds to which they respectively belong, in such banks * * * *".

In accordance with Article X, Section 15, just quoted, the Legislature has enacted three statutes which are as follows:

"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 * * * *" R. S. Mo. 1929, Sec. 11465."

"The treasurer shall keep separate accounts of the funds of the state, and may require any depository to do the same, showing the name of each fund to which the money belongs and the amount of the interest paid by any bank, and said interest shall be apportioned and credited to such funds monthly." R. S. Mo. 1929, Sec. 11471.

"All fees, funds and moneys from whatsoever source received by any department, board, bureau, commission, institution, official or agency of the state government by virtue of any law or rule or regulation made in accordance with any law, shall, by the official authorized to receive same, and at stated intervals, be placed in the state treasury to the credit of the particular purpose or fund for which collected, and shall be subject to appropriation by the General Assembly for the particular purpose or fund for which collected during the biennium in which collected and appropriated. * * * *" Laws 1933, page 415.

The above cited and quoted constitutional and statutory provisions make clear the following two propositions:

1. That the funds collected from license fees for egg-dairy products inspection must be paid into the state treasury.
2. That they must be deposited by the state treasurer to the credit of the particular fund into which the statute providing for their collection requires them to be put.

(B) FEES COLLECTED MUST BE DEPOSITED IN GENERAL REVENUE FUND

1. The state treasury into which all state funds must go is not the same as the general revenue fund of the state. The state treasury comprises all state money and as provided in Article X, Section 15 of the Constitution above quoted the state treasurer is required to place all moneys in the state treasury "for the benefit of the funds to which they respectively belong." That the general revenue fund is merely one of the particular funds to the credit of which state money shall be placed appears from the case of *State ex rel Peth v. Henderson*, 160 Mo. 190, 60 S. W. 1093 (1901).

"But again, section 15, article 10, leaves no doubt whatever as to the intention of the convention. It requires that 'all moneys now or at any time hereafter, in the State Treasury, belonging to the State, shall immediately on receipt thereof be deposited by the Treasurer to the credit of the State for the benefit of the funds to which they respectively belong in such bank or banks' as may be selected under that section.

So that it will not do to say that the Constitution requires all revenues of the State to be first paid into one general or common fund and then disbursed in the order named in section 43, article 4, of the Constitution." (160 Mo. 190, pp. 210, 211.)

Thus it is clear that all money going into the state treasury does not go into one general revenue fund, after which it is put into several special funds, leaving the residue as the general revenue fund, but on the other hand the treasurer puts all state money directly into the separate funds for which it was collected, of which the general revenue fund is merely one.

2. The fact that the general revenue fund is merely one of many funds into which state money is segregated makes it clear that laws of 1933, page 415 quoted above does not require the setting up of separate special funds for all money in the state treasury although such statute requires all money received by the state to "be placed in the state treasury to the credit of the particular purpose or fund for which collected." The "general revenue fund", as one of such funds, can receive the money collected for it as well as a special separate fund, because the "general revenue fund" is only one of the various funds of the state, is not the equivalent of the state treasury, and stands on the same footing as any other separate fund created by law. If this statement were not true, and if the general revenue fund were the equivalent of the state treasury then Laws 1933, page 415, might well be construed to change the law

as it stood at the time of its enactment because if the general revenue fund were the same as the state treasury this statute would probably require it to be broken up entirely into separate funds, but the general revenue fund being merely a part of the state fund and one of many state funds this statute does not change the law as the statute will be complied with if money collected for the general revenue fund is credited to it.

3. The statutes relating to the deposit and disposition of fees collected under the egg and dairy products inspection laws are as follows:

MILK AND CREAM FEES. "All fees collected by the state dairy commissioner or his deputies under the provisions of this article shall be turned into the state treasury for the general revenue fund." R. S. Mo. 1929, Section 12431.

ICE CREAM FEES. "Such fees shall be paid into the state treasury to the credit of the general revenue fund of the state." Laws 1933, page 254, Section 13071.

EGG FEES: "All inspection fees under this article shall be paid into the state treasury." R. S. Mo. 1929, Section 13065.

From the first two of these three statutes it is apparent that fees for these two inspection services must be credited to the general revenue fund when they go into the state treasury. This is especially clear when Revised Statutes Missouri 1929, Section 13071, repealed and superseded by the same numbered section in Laws 1933 is examined. The older statute provides in part as follows:

"Such fees shall be paid into the state treasury and there constitute a fund to be known as the 'Ice cream inspection fund' and shall as authorized by the general assembly, be used by the state food and drug commissioner, for the purpose of defraying the expenses necessary and incident to the enforcement of this article. Any surplus accruing to said 'ice cream inspection fund' shall at the end of the biennium revert to the general revenue fund of the state."

Thus before the 1933 act there was a special fund for such fees but such special fund was abolished by the 1933 act so as to milk, cream and ice-cream inspection fees it is clear that no special fund is created by statute, but that such fees go into the general revenue fund unless the appropriation act of itself creates such special fund. It will be observed that the egg inspection fees are not appropriated to the general revenue fund expressly, nor is any special fund created for them unless it is created by the appropriation act.

II.

DISPOSITION OF FEES BY VIRTUE OF THE APPROPRIATION ACT

It has just been demonstrated that no special funds are created by statute for any fees in question unless the appropriation act of itself creates such fund and it has further been demonstrated that as to milk, cream and ice-

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cream fees the money collected must go into the general revenue fund. Likewise the appropriation act while it is ambiguous in its terms puts fees from all three sources on exactly the same basis and the appropriation from whatever fund made by the appropriation act is entirely from the same fund.

The Constitution of Missouri Article X, Section 19, provides in part as follows:

"No moneys shall ever be paid out of the treasury of this State, or any of the funds under its management, except in pursuance of an appropriation by law; * * *"

If the appropriation act is construed as creating a special fund in the case of milk, cream and ice-cream fees an appropriation would be necessary to get such funds first from the general revenue fund to such special fund, and second to get such moneys from such special fund to the Department of Agriculture, and it is apparent from reading the appropriation act that it only purports to make one transfer or appropriation of funds. The only basis for regarding the appropriation act as creating a special fund is the language thereof beginning "from licenses and fees etc.". If such language should be construed as creating a special fund it hardly seems likely that it is intended also to appropriate out of such fund because there is a considerable difference between the creation of a special fund and appropriations from it, as was pointed out by the court in *State ex rel Kessler v. Hackmann*, 304 Mo. 453, 264 S. W. 366 (1924) in which the court at page 458 said:

"On the other hand, this court has held that a fund, raised by an act for a special purpose, could not be paid out of the State Treasury except upon an appropriation by an act of the Legislature. (*State ex rel. Fath v. Henderson*, 160 Mo. 190, l. c. 214; *State ex rel. v. Gordon*, 236 Mo. 142, l. c. 158.) In the case last cited the court had under consideration a fund for the support and maintenance of the Game Department. It was held that the creation of a special fund is not a continuing appropriation of the fund, or of any part of it, to pay accounts drawn against it. That the creation of the fund is one thing, and the appropriation of money to pay accounts against the fund is quite another thing. The language of the Constitution is unequivocal; it requires an appropriation before payment of money received by the State 'from any source whatsoever.'. The money collected by the board is received by the State; it goes into the State Treasury. To make it more specific, the requirement that an appropriation by the Legislature will be necessary before money can be paid out of the treasury of the State, it is applied, not only to state funds, but to 'any of the funds under its management.'"

Even if it were decided that the appropriation act performs the two functions of creating the special fund and making the appropriation from it it would seem that such appropriation act would be ineffective as to milk, cream and ice-cream fees because no appropriation act exists transferring these funds from the general revenue fund to such special fund and, therefore, the appropriation would be from a fund which had no money in it and it seems clear that an

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appropriation act would be necessary to transfer money from the general revenue fund to such special fund. See Laws 1933, page 71, Section 14 page 67, Section 7-a providing for such transfers between the general revenue fund and special funds.

For the above reason if the appropriation act were by its terms completely ambiguous it would seem that the construction that the appropriation was from a special fund created by the appropriation act would not be made for the reason that it would destroy the effect of the appropriation act as to milk, cream and ice-cream fees. However, the appropriation act is not completely ambiguous on its face because it begins "There is hereby appropriated out of the state treasury, chargeable to the general revenue fund * * *". If the construction were made of the appropriation act that the appropriation was to be out of a special fund the language just quoted would be flatly contradicted whereas if the opposite construction were made that the appropriation was as it says out of the general revenue fund there would be no contradiction because the phrase "from licenses and fees collected etc." could be held to be descriptive or surplusage and would not be contradicted, and it would seem better to have one phrase comparatively meaningless than to have another phrase flatly denied by construction.

As to the egg fees while a stronger case could be made for the creation of a special fund ~~if~~ the appropriation act referred to egg fees alone, since the appropriation for egg inspection is put on exactly the same footing as the appropriation for milk, cream and ice-cream inspection the appropriation for all of these services must be from the same fund since it is covered by the same language and therefore it is submitted that the proper construction would be that no special funds were created and that the general revenue fund is the fund from which the appropriation is made.

The case of State v. Bradshaw, 313 Mo. 334, 281 S. W. 946 (1926) may throw some light on the language of the appropriation act beginning "from licenses and fees etc." In such case grain inspection fees were in question which were required by the governing statute to be paid into the treasury, although the act showed a clear purpose that such fees were to be used for nothing but the expenses of the Grain Inspection Department. The Court at page 343 said:

"The Commissioner is required to regulate the rates so as to meet the necessary expenses of the service and 'no more.' That expression was construed by this court in the case of State ex rel. v. Gordon, 266 Mo. 1. c. 415, where it was held that the department was not intended to earn any profit, but merely to pay its way. The State of Missouri was not entitled to obtain any revenue for other purposes from any of the fees paid in for the work done by the Warehouse Commissioner and his assistants.

The purpose of having the fees collected and paid into the State Treasury is apparent. Section 43, Article IV, of the Constitution, requires that all revenues collected and 'moneys received by the

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State from any source whatsoever" shall go into the Treasury and must be paid out on appropriations by the General Assembly. When the charges for inspecting grain are paid to the commissioner, the inspector, his deputy or assistants, they must be paid, of course, to the State of Missouri. The money must go into the State Treasury. This is done so that the proper authorities may keep a check upon all the operations of every department of State. To allow a department of State, which is self-supporting from charges paid for services rendered, to have charge of the money received without accounting to the State in any way, would probably lead to abuses. The requirement that all money shall go into the State Treasury, with statements accounting for how it was received, would prevent exorbitant charges, which might weigh down the grain trade with undue burdens. From the fact that the money was to be paid into the State Treasury and go into the general revenue fund, it does not follow that the State should have any money from that source to appropriate for other purposes; the amount received from that department should be exactly, or approximately, balanced against the expense of the department."

Also, if there was to be a dependence between fees collected and the expenses of the Department of Agriculture it would seem that some such provision as appeared in the appropriation act of 1931 at page 95 of Laws 1931 would have been added. In such statute it was provided in part as follows: "There is hereby appropriated out of the state treasury, chargeable to the state revenue fund, * * * provided that no greater amount shall be withdrawn or expended under this appropriation than is received from dairy license fees." No case has been found in which a special fund has been created by implication and it seems especially likely that such a fund would not arise by implication from the terms of an appropriation act as opposed to a general statute.

For the reasons stated above, it is our opinion that there is no such thing as a special fund or funds to the credit of which fees collected from milk, cream, ice-cream and egg inspection are to be deposited, and that the appropriation act at page 66 of Laws 1933 provides that the appropriation for the Department of Agriculture for this inspection service is an appropriation from the general revenue fund of the state.

Yours very truly,

EDWARD H. MILLER,

APPROVED:

ASSISTANT ATTORNEY GENERAL.

ATTORNEY GENERAL.