

GRAIN INSPECTIONS:-Money derived from sale of surplus grain must be paid into the State treasury to be withdrawn only on proper appropriation, and cannot be expended by the Grain Inspector for any purpose.

June 11, 1934.



Mr. J. B. Hopper,
State Warehouse Commissioner,
Kansas City, Missouri.

Dear Sir:

We are acknowledging receipt of your letter in which you inquire as follows:

"We have a condition existing in this Department that there have been several opinions handed down on, by Attorney Generals in the past and as I am very anxious to have an opinion from your Department, I am writing you in regard to the overflow of waste grain that comes into this Department for our inspectors. In other words, out of each sample taken from the various cars, there is a small amount left over after the inspectors are through with their work.

This grain is saved, and from time to time is sold. This money obtained from the selling of this accumulated grain has in the past been used to pay for additional furniture that might be added to the Department, or any traveling expenses that are incurred by having men go from place to place, and for replacements or worn out utensils in the inspection department and laboratories, and we would like to have your opinion as to the legality of this method used in the past.

I am enclosing an opinion handed down to this Department under date of June 12, 1929, which is more explanatory than my letter, no doubt. Thanking you in advance for an early opinion in this matter."

We have read the opinion attached to your inquiry given by former Attorney General Stratton Shartel. While we respect the opinions given by the former Attorney Generals

yet in this instance we do not believe that we can concur in the ruling he has made. While we cannot find any decision passing upon this proposition, we believe that the Constitution prohibits the practices outlined in your letter.

It appears from your letter that these samples of grain are taken for the purpose of being used for inspection. The right to take the grain for inspection purposes exists simply because the inspectors are representing the State in carrying out the inspection duties imposed by statute. We must assume that the title to the grain taken for inspection purposes is in the State. If such be true, the title to that part of the grain not consumed in examination, as well as that part consumed in making your examination, must also be in the State. Under no circumstances can it be said that the title to any of this grain would be in yourself or any member of your Department because the inspectors are acting simply as agents of the State in carrying out the mandates of the Statutes. If the title to the part of the grain taken for samples is in the State, then the title to all of that taken must be in the State. The only other person who could doubt the validity of the State's title would be the person from whom the grain was taken, and since he is not a party to this question we must assume, for the purpose of this opinion, that the title to all of the grain in question was and is in the State of Missouri.

Assuming then that the title to all of the grain which is left over is in the State of Missouri the question is presented, what shall be done with the money derived from the grain after it is sold. If the title to the original grain is in the State, then the proceeds resulting from the sale of the State's property would belong to the State. Such being true, we believe that Section 43 of Article IV of the Constitution of this State applies. That section is as follows:

"All revenue 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. All appropriations of money by the successive General Assemblies shall be made in the following order:

First, For the payment of all interest upon the bonded debt of the State that may become due during the term for which each General Assembly is elected.
Second, For the benefit of the sinking fund, which shall not be less annually than

two hundred and fifty thousand dollars.
Third, For free public school purposes.
Fourth, For the payment of the cost of assessing and collecting the revenue.
Fifth, For the payment of the civil list.
Sixth, For the support of the eleemosynary institutions of the State.
Seventh, For the pay of the General Assembly, and such other purposes not herein prohibited as it may deem necessary; but no General Assembly shall have power to make any appropriation of money for any purpose whatsoever, until the respective sums necessary for the purposes in this section specified have been set apart and appropriated, or to give priority in its action to a succeeding over a preceding item as above enumerated."

The above constitutional provision provides that "all revenue collected and moneys received by the State from any source whatsoever shall go into the treasury." While we do not contend that the proceeds from the sale of this grain can be construed as revenue collected, yet it certainly does come within the next provision because it is money received by the State for the sale of property belonging to the State. While the former Attorney General seemed to find no provision directing this fund to be paid into the State Treasury, we conclude that under the foregoing constitutional provision all the moneys derived from any source shall go into the State Treasury. Such is the plain mandate of the Constitution.

The well recognized policy of the State, as expressed in its Constitution and Statutes, is that all revenue and moneys derived from any source, except a few exceptions which do not apply in this case, shall go into the State Treasury and shall then be appropriated by the Legislature to provide the necessary means of carrying out the obligations of the State. Section 19 of Article X of the Constitution, among other things, provides 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 ****."

In view of the foregoing constitutional provision we are of the opinion that the proceeds derived from the sale of grain, the title of which is in the State, should go into the State Treasury, and that the money resulting therefrom cannot be expended for any purpose unless a legal appropriation is made by the Legislature. Such being true, it must necessarily follow that yourself nor the officers of your

Department would have no right to use the proceeds resulting from the sale of this surplus grain for the purpose of buying materials or supplies for your Department, or paying expenses incurred by your men in carrying out the duties of their office. The Legislature, by its appropriations, has made appropriations for the very purpose of doing the things which you seek to do with the money derived from this grain. The money which you receive from the sale of this grain must be paid by you into the State Treasury, there to remain until such time as the Legislature sees fit to appropriate it for some appropriate purpose, as provided for under our Constitution. Unless such is done we would have a situation where your Department would be using State moneys which were not appropriated by the Legislature. Such a situation would be directly in conflict with Section 19 of Article X of the Constitution. While the amount of money involved may not be large, yet we are compelled to construe the Constitution as it is written, regardless of whether the amount be large or small, or whether such construction might result in some apparent inconvenience to the Department involved.

We are therefore on the opinion that the title to the grain in question is in the State and that when it is sold the proceeds resulting therefrom are moneys received by the State from such source and it shall be paid directly into the Treasury under Section 43 of Article IV of the Constitution; that to permit your Department to use the money derived from the sale of this grain for the purpose of carrying on the functions of your office would be permitting your Department to use State funds without an appropriation; that the money derived from the sale of this surplus grain must be paid into the State Treasury, there to remain until such time as the Legislature directs that it be paid out under a legal appropriation according to the purposes expressed in the Constitution, and that your Department would have no right to use the moneys derived from the sale of this grain for the purpose of buying furniture or equipment or paying the expenses of the men in carrying out the duties of their offices until such time as the Legislature, by a proper appropriation, authorizes its use for such purpose.

Very truly yours,

APPROVED:

FRANK W. HAYES,
Assistant Attorney General.

Attorney General.