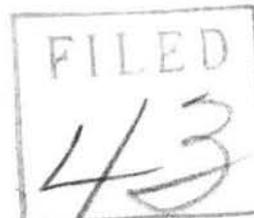


PENITENTIARY: ) Money deposited in fund for convicts cannot  
CONVICTS' FUND: ) be diverted to any other use without consent  
of convict or by court action.

5-9  
May 6, 1935.



Hon. S. B. Hunter  
Chairman  
Department of Penal Institutions  
Jefferson City, Missouri

Dear Mr. Hunter:

This is to acknowledge your letter as follows:

"On the night of April 17, 1933, a trusty at the Missouri Training School, Boonville, burglarized the commissary there, stole about \$46.00 and some clothing, and then escaped. When apprehended, he was tried in the Circuit Court of Cooper County and sentenced to the Penitentiary.

At the time this inmate escaped from the Training School, he had \$10.01 on deposit in his account. Now he is asking that the \$10.01 be forwarded to him at the Penitentiary, where he is confined.

The Penal Board would like to be advised as to whether or not the deposit of \$10.01 may be retained by the Training School and applied as a partial replacement of the money stolen from the commissary."

From the facts stated in your letter we understand that an inmate at the Boonville Training School deposited \$10.01 with some official of the Training School, such

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money being held in trust and for the use of the inmate; and owing to the fact that the inmate stole some money and escaped it is sought to apply the money he had on deposit to the payment of money stolen.

In our opinion the \$10.01 belongs to the inmate and cannot be taken from him except by due process of law. "Due process of law" means by consent of the convict, or, second, by court action, namely, obtaining judgment and execution. If the \$10.01 is arbitrarily taken from the inmate, it will be in violation to the Constitution of Missouri, particularly Section 30, Article II, which provides:

"That no person shall be deprived of life, liberty or property without due process of law."

Therefore, since this money is the property of the convict, the holder of such is merely acting in the capacity as trustee for the benefit of the cestui que trust (convict) and such trustee is held liable for the safe-keeping of said money. It follows that the money is subject to the wishes and disposal of the convict unless it is taken from him by due process of law.

Yours very truly,

James L. HornBostel  
Assistant Attorney-General

APPROVED:

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ROY MCKITTRICK  
Attorney-General

JLH:EG