

TAXATION AND REVENUE:)
BILLS.)

1-14
Tax law can provide receipts to go to exclusive fund for specific purpose.

January 10, 1935.



Senator James C. McDowell
Capitol Building
Jefferson City, Missouri

Dear Senator:

We herewith render you an opinion in respect to your oral request for our views on the following proposition:

"May the General Assembly enact a cigarette tax and provide that the proceeds thereof be placed in a special fund from which to pay old age pensions?"

At the general election held November 8, 1932, the people adopted Constitutional Amendment No. 1, being an amendment to Section 47 of Article IV of the Constitution of Missouri, by adding the following phrase to said section:

"Provided further, that nothing in this Constitution contained shall be construed as prohibiting the general assembly from granting or authorizing the granting of, pensions to persons over seventy years of age, who are incapacitated from earning a livelihood and are without means of support, as may be provided and regulated by law."

Section 47 of Article IV of the Constitution prohibits the General Assembly from authorizing any county or political corporation or subdivision from lending its credit or granting public money to the aid of individuals. By amendments certain exceptions have been provided, one authorizing the creation of a fund for the pensioning of crippled and disabled fireman, another authorizing the granting of pensions to deserving blind. With the last amendment a further exception is made authorizing the granting of pensions to persons over seventy years of age incapable of earning a livelihood and without means of support.

This last amendment does not provide for the levy of a tax and the establishment of a specific fund from which the benefits to be granted are to be paid exclusively, as did the amendment authorizing blind pensions. We are therefore confronted with the problem as to whether the Legislature can establish such a fund although not provided for in the Constitution. We are promptly confronted with Section 34 of Article IV of the Constitution providing in part 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 divers the same, or to permit money to be drawn from the treasury, except in pursuance of regular appropriations made by law.* * * *"

This provision would require that all moneys collected under the provisions of the cigarette tax would have to be paid into the State Treasury and could only be expended under the authority of a legislative appropriation. If the purpose sought to be obtained is to be accomplished without a further constitutional amendment, it can be done by a provision in the tax law providing that the taxes raised under the measure are to be paid into a special fund to be known as the Old Age Pension fund, or some such other appropriation title, to be used only for the purpose of carrying out the provisions of the Constitutional Amendment No. 1, adopted by the people of Missouri on November 8, 1932. Regular appropriation bills would be necessary before the funds could be expended and the tax law itself would always be subject to legislative will, to-wit, the Legislature could by appropriate action change the purpose for which the tax was to be expended.

As authority for the foregoing suggestion we refer to the case of State ex rel. Fath vs. Henderson, 160 Mo. 190. The Supreme Court in Banc in this case passed upon the constitutionality of the Collateral Inheritance Tax Law of 1899. This law levied a collateral inheritance tax and provided that the receipts therefrom should be deposited in the "State Seminary Moneys" fund, to be devoted to the exclusive use of the University of Missouri and the Rolla School of Mines. This act read in part as follows:

"Sec. 4. The moneys received by the State Treasurer under the provisions of this act shall be deposited in the State Treasury to the credit of the fund now existing in the State Treasury and known as the "State

Seminary Moneys," for the maintenance, support and better equipment of the buildings, apparatus, books, instruction, etc., of the University of the State of Missouri, to an amount not exceeding in any one year the equivalent of one-tenth of one mill upon every dollar of the assessed valuation of taxable property of this State for the said year: Provided, that one-eighth of all such moneys so received shall be devoted to the use of the School of Mines and Metallurgy, a department of the said University: Provided, further, that if the net amount deposited in any one year by the State Treasurer under the provisions of this act, to the credit of the 'State Seminary Moneys' be not equivalent to one-tenth of one mill upon every dollar of the assessed valuation of taxable property of this State for the said year, it shall be the duty of the State Treasurer to make good this deficiency out of the first moneys received under the provisions of this act in the next succeeding year: Provided further, that all said moneys shall be disbursed in pursuance of regular appropriations of the General Assembly, in accordance with the provisions of section five thousand six hundred and ninety-one (5691) of the Revised Statutes of 1889.

Sec. 5. The moneys received by the State Treasurer under the provisions of this act which shall exceed in any one year the amount required by section four of this act to be deposited to the credit of the 'State Seminary Moneys,' shall be deposited in the State Treasury to the credit of a fund to be known as the 'Educational Funds,' which is hereby created and established. The moneys deposited in the said fund shall be appropriated by the General Assembly for public educational purposes.* * * *

In passing upon the constitutionality of the foregoing provision the Court stated, 208 et seq:

"The first contention of the relators is that the Act of April 19th, 1899, is unconstitutional, because it appropriates the State's revenues in an inverse order to that laid down in section 43, article 4, of the Constitution, and destroys the

priorities provided in that section.

As said by the learned counsel who maintains this proposition, a somewhat brief consideration ought to demonstrate its truth or its unsoundness.

The constitutional provision is simple, and the statute is unobscure. The argument of relator is predicated on section 43 of article 4 of the Constitution, namely, that, '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 permit the money to be drawn from the Treasury except in pursuance of regular appropriations made by law,' which is followed by the provision directing the order in which the Legislature shall pass appropriation bills.

From these words counsel deduce the proposition 'that all revenue collected and moneys received by the State from every source shall go in the first instance into one common or general fund, unfettered, unpledged and unappropriated,' and that these words necessarily prohibit the creation of any special funds in the Treasury to be supplied out of revenue provided by the General Assembly.

Other words must be read into the article to justify such an interpretation, to-wit, 'one general fund.' If such was the intention of the framers of the Constitution they were singularly unhappy in expressing themselves, an imputation which we are unwilling to cast upon that body, especially when they were preparing an instrument so solemn and important in its nature.

Learned counsel reach their conclusion that the convention intended that all revenue and moneys collected should go into 'one general' or 'common fund' by a process of reasoning and not from any express command of the Constitution. If they are right, then all the revenues must go into one common or general fund and yet the Constitution itself provides elsewhere for special funds.

* * * * *

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.

That section simply requires the General Assembly to proceed in that order in passing its appropriation bills.

It does not follow because the Legislature is required to pursue a specific order in passing appropriation bills, that it may not provide a tax for a public purpose, and require it to be paid into the Treasury and set apart in a special fund subject to a subsequent appropriation for the purpose for which it was levied, or for that matter, to some other public purpose, when unrestrained by a constitutional limitation.* * *

The Collateral Inheritance Tax Law was a privilege or excise tax as would any cigarette tax law undoubtedly be which is adopted. We believe the foregoing case to be in point on this question and ample authority for a provision setting up a special fund for old age pensions and providing that the proceeds in such fund shall only be used for the purpose of carrying out the Constitutional Amendment. We do not find that this case has been overruled or criticized in any subsequent opinion of our Supreme Court.

Such a legislative enactment would of course be on the same basis as any other legislative act and could not authorize the expenditure of the funds without placing them in the treasury or without a legislative appropriation therefor. The moneys in this fund and the appropriation therefore would be on the same basis as other appropriation acts. The moneys in the fund could not be

construed as being continually appropriated for the purpose of carrying out the amendment.

In the case of State ex rel. Kessler vs. Hackman, 304 Mo. 453, the Court pointed out the distinction between the creation of a special fund and the appropriation of moneys from that fund, l. c. 458:

"* * * 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. Peth 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.'"

Although uninformed as to the plan for the administration of the act, this fund would probably fall within the provisions of Senate Bill 124, page 414, Laws of Missouri, 1933, unless provisions were made to exempt such fund from the operation of this law. You will recall that this act provides for the transfer of all moneys in special funds into the general revenue fund at the expiration of each biennial.

While the taxing act itself would be subject to amendment or change by each general assembly, still so long as the act provided for the use of the funds to pay old age pensions, a lawful

appropriation of those funds could not be made for any other purpose. This issue has recently been settled in the case of State ex rel. Davis vs. Smith, 75 S. W. (2d) 828. In this case the Court held an appropriation act to be ineffectual which conflicted with the substantive law on the subject, l. c. 830:

"It cannot be said that the act appropriating \$3,000 from the general revenue fund to the board of barber examiners' fund amounted to an amendment of section 13525, R. S. 1929 (Mo. St. Ann. Sec. 13525, p. 637). It does not attempt to amend that section. Its sole purpose was to appropriate \$3,000 from one fund to another. It reads as follows:

'There is hereby appropriated out of the state treasury, chargeable to the general revenue fund, the sum of three thousand (\$3,000.00) dollars to the Board of Barber Examiners Fund.' (Laws 1933-34, p. 12, Section 12B.)

Besides, legislation of a general character cannot be included in an appropriation bill. If this appropriation bill had attempted to amend section 13525, it would have been void in that it would have violated section 28 of article 4 of the Constitution which provides that no bill shall contain more than one subject which shall be clearly expressed in its title. There is no doubt but what the amendment of a general statute such as section 13525, and the mere appropriation of money are two entirely different and separate subjects. State ex rel. Hueller vs. Thompson, State Auditor, 316 Mo. 272, 289 S. W. 338.* * *

CONCLUSION.

It is therefore the opinion of this office that a cigarette tax law could be enacted providing that the receipts therefrom should be used exclusively for payment of Old Age Pensions, but that unless there is a constitutional amendment adopted so providing,

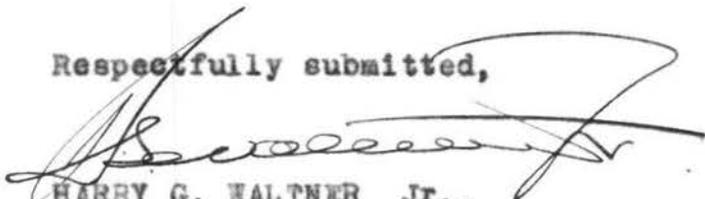
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the law would be subject to legislative action at any time, but so long as the act provided the funds to be used for Old Age Pensions no other lawful appropriation thereof could be made.

Respectfully submitted,



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APPROVED:

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