

BOARD OF HEALTH:) Fund for water analysis after being placed
) in treasury may not be withdrawn unless
APPROPRIATIONS:) appropriated by the Legislature.

February 6, 1935.



E. T. McGaugh, M. D.
State Health Commissioner
Jefferson City, Missouri

Dear Dr. McGaugh:

This is to acknowledge your letter dated February 4th, 1935, as follows:

"The Revised Statutes of Missouri 1929, Chapter 52 Section 9032 - Subject - Analysis, fees - states that 'analysis of all waters required by this article shall be made at the state board of health laboratories at Jefferson City, Missouri. The fees collected by the state board of health under this article shall be turned over to the State Treasurer, who shall place them in a special fund to be known as the state board of health water and sewerage fund and as much as is necessary of this fund shall be used for maintaining the division of the state board of health to be known as the division of water and sewerage and said fund is hereby appropriated for said purpose, and the state auditor shall draw his warrant for claims against this fund after such claims have been approved by the secretary of the state board of health:'

After reading this article I would like an opinion as to whom are eligible to draw their salaries from this fund. It seems to me that it is not placed in the State Board of Health fund or any Health Department fund. Would it be

"proper and legal for the Engineering Department and part of the Laboratory Personnel who make these water analyses and make this fund possible to draw their salaries and a limited amount of their expenses therefrom."

Section 9031, R. S. Mo. 1929, provides as follows:

"The state board of health shall make and enforce adequate rules and regulations for the maintenance of a safe quality of water dispensed to the public and for the collection of samples and analysis of water, either natural or treated, furnished by municipalities, corporations, companies, or individuals to the public and shall fix the fees for any service rendered under the rules and regulations to cover the cost of the service."

Section 9032, R. S. Mo. 1929, provides as follows:

"The analysis of all waters required by this article shall be made at the state board of health laboratories at Jefferson City, Missouri. The fees collected by the state board of health under this article shall be turned over to the state treasurer, who shall place them in a special fund to be known as the state board of health water and sewage fund and as much as is necessary of this fund shall be used for maintaining the division of the state board of health to be known as the division of water and sewage and said fund is hereby appropriated for said purpose, and the state auditor shall draw his warrant for claims against this fund after such claims have been approved by the secretary of the state board of health: Provided, no fees under this section shall be paid by any city or municipality except when the waterworks is owned and operated by said city or municipality."

We direct your attention to the fact that Section 9031, supra, provides that the State Board of Health shall make and enforce adequate rules and regulations for the maintenance of a safe quality of water dispensed to the public and shall fix the fees for the service rendered under rules and regulations to cover the cost of the service. The State Board of Health, then, fixes the rules and regulations and fixes the fees to cover the cost thereof. Section 9032, supra, provides that the fees shall be collected and turned over to the state treasurer with direction to him to place such in a special fund to be known as the "state board of health water and sewage fund" and such fund "shall be used for maintaining the division of the state board of health to be known as the division of water and sewage."

From the above, then, it is seen that the fees collected cover the actual cost of the service of water analysis and are placed into the state treasury into a special fund. After the moneys are placed into the treasury, then such may only be withdrawn by an appropriation act. If salaries are to be paid out of this fund, then the Legislature should appropriate out of this fund for the payment of such. Sans an appropriation by the Legislature this fund cannot be withdrawn from the treasury. Such has been the holdings of the Supreme Court of Missouri in many cases.

We direct your attention to Section 43, Article IV, of the Constitution of Missouri, which in part provides 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."

Section 19, Article X, of the Constitution of Missouri, 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."

Section 9032, supra, provides in part, "and said fund is hereby appropriated for said purpose, and the state auditor shall draw his warrant for claims against this fund after such claims have been approved by the secretary of the state board of health" and it might be argued that the auditor must issue his warrant on this fund when accounts are properly presented without a special appropriation by the Legislature.

In State ex rel. Kessler et al. v. Hackmann, State Auditor, 264 S. W. 366, the Supreme Court of Missouri answered a similar question, having the following to say:

"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 et al. v. Henderson, 160 Mo. 190, loc. cit. 214, 60 S. W. 1093; State ex rel. v. Gordon, 236 Mo. 142, loc. cit. 158, 139 S. W. 403. 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.'"

"It is manifest that the intention of the Legislature in placing the funds in the hands of the state treasurer was, not only to provide official information as to its disbursement, but to keep the expenses of the department within the limits provided by the Legislature. The Legislature may be presumed to have had the constitutional restrictions in mind when they passed the act creating the fund.

The peremptory writ is denied."

CONCLUSION.

It is our opinion that it will take an act of the Legislature to appropriate the moneys out of this fund for the payment of salaries, expenses or any other items.

Yours very truly,

James L. HornBostel
Assistant Attorney-General

JLH:EG

APPROVED:

ROY McKITTRICK
Attorney-General.