

STATE BOARD OF ACCOUNTANCY: Subject to the terms of Sec. 1
Laws of Mo. 1933, p. 416, relating to boards, bureaus and com-
missions paying all fees into the State Treasury.

January 18, 1936.

1-20



Honorable Forrest Smith,
State Auditor,
Jefferson City, Mo.

Dear Sir:

We are in receipt of your letter of December 18
with which you enclose copy of your letter of December 10
to Mr. J.H. O'Connell, Secretary of the State Board of Account-
ancy and Mr. Fraser's letter of December 17 in reply thereto.
Your letter of December 10 to Mr. O'Connell is as follows:

"In checking our records I find
that you have failed to comply
with Section 1, on page 415 of
the 1933 Laws of Missouri, which
provides among other things that
all fees, funds and money from
whatever source received from any
department, must be deposited with
the State Treasurer.

"In pursuance of that law, the last
Legislature on page 85, Section 1,
1935 Laws, made an appropriation
for the payment of the expenses of
your Board. We are unable to find
where you have ever remitted to
the State Treasurer any of your
fees and I am calling your attention
to this matter and sending a copy
of my letter to Mr. Jeff K. Stone,
President State Board of Accountancy,
St. Louis, Mo.

"I contemplate making an audit of
your Board in the very near future,
and would like to have these provisions
of the law complied with before the audit
is made."

Your letter of December 18 to this department is as follows:

"I am enclosing a copy of a letter which I have written to the State Board of Accountancy and their reply to my letter. I would like an opinion from your department as to whether the State Board of Accountancy comes under the provisions of S.B. 124 found on page 415 of the 1933 Missouri laws."

It appears from Mr. Fraser's (Treasurer of the State Board of Accountancy) letter that his contention is that the State Board of Accountancy is not subject to the provisions of Sec. 1, Laws of Missouri, 1933, page 415, which provides:

"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. The unexpended balance remaining in all such funds (except such unexpended balance as may remain in any fund authorized, collected and expended by virtue of the provisions of the Constitution of this State) shall at the end of the biennium and after all warrants on same have been discharged and the appropriation thereof has lapsed, be transferred and placed to the credit of the ordinary revenue fund of the state by the state treasurer. Any official or other person who shall willfully fail to comply with any of the provisions of this section, and any person who shall willfully violate any provision hereof, shall be deemed guilty of a misdemeanor; provided,

that in the case of state educational institutions there is excepted herefrom, gifts or trust funds from whatever source; appropriations, gifts or grants from the Federal Government, private organizations and individuals; funds for or from student activities, farm or housing activities, and other funds from which the whole or some part thereof may be liable to be repaid to the person contributing the same, and hospital fees; all of which excepted funds shall be reported in detail quarterly to the Governor and biennially to the General Assembly."

Section 13711, R.S. Mo. 1929 creates the State Board of Accountancy, and is as follows:

"The Governor shall, within thirty days after the taking effect of this chapter, appoint five persons, who shall constitute the board of accountancy, each member of which shall have been engaged in the reputable practice as a public accountant for a continuous period of three years immediately preceding the passage of this chapter, one of which shall have been in the State of Missouri. The persons first appointed shall hold office for one, two, three, four and five years respectively. Upon the expiration of each of said terms, a member, who shall be a holder of a certificate issued under this chapter, shall be appointed for a term of five years."

Section 1, supra, (Laws of Mo. 1933, p. 415) is plain and definite in its terms and mentions boards specifically. The Supreme Court has never definitely determined just what boards, bureaus, commissions, etc. come within the terms of Section 1; however, the section states: "All fees, funds and moneys from whatsoever source received by any department, board, bureau, commission * * *" and the proviso excepts certain funds and fees, none of which we can construe as to exempt the State Board of Accountancy.

In the case of State v. Smith, 75 S.W. (2d) 828, the

Court, in discussing the status of the State Barber's Board, with reference to an additional appropriation having been made to said board, said (l.c. 830-831):

"Relator makes the further contention that, if section 13525, R.S. 1929 (Mo. St. Ann. Sec. 13525, p. 637), be construed as meaning that the per diem and expenses of the board cannot be paid out of any fund except the fund created from fees collected by the board and paid into the state treasury, such a construction would not avail respondent in this proceeding.

"Relator's argument in support of this contention, taken from his reply brief, reads as follows:

"For as we pointed out in our original brief, the fees which have been collected and paid into the State Treasury by the Board far exceed the expenses and compensation to which they are entitled under said Section 13525. On February 28, 1933, the General Assembly owing to an emergency, transferred the funds which had accumulated from the fees collected by the Board, \$25,308.60, to the General Revenue Fund. (Laws 1933, p. 415) If the Legislature could not appropriate money from the General Revenue to pay the expenses and per diem of the members of the Board, then by the same token it could not transfer to the General Revenue the fund set apart by law for payment of the expenses and compensation of the Board. So that the appropriation of \$3,000 for the uses of the Board was in legal contemplation an appropriation from the Board of Barber Examiners Fund then commingled with the General Revenue:"

"We do not agree with relator's contention on this point. Section 13525, R.S. 1929 (Mo. St. Ann. Sec. 13525, p. 637), which provides that the salaries and expenses of the board shall be paid by warrants drawn on the

fund created from fees collected by the board and paid into the state treasury, makes the following further provision:

* * * * And any surplus remaining in said fund annually after payments above authorized shall be paid into the public school fund of this state.'

"By the express provisions of section 13525, R.S., any surplus remaining in the board of barber examiners' fund at the close of the years 1931 and 1932 passed to the public school fund of the state. We recognize the right of the Legislature to provide by law that the surplus in such fund shall be transferred to the general revenue fund instead of the public school fund, but the act of February 28, 1933 (Laws 1933, p. 415), which purports to transfer to the general revenue fund all sums of money in the state treasury to the credit of the board of barbers' fund, etc. would not have the effect of transferring a surplus remaining in such fund for the years 1931 and 1932, the title to which had by law passed to and vested in the public school fund before the transfer act of February 28, 1933 was passed. This act does not purport to transfer any definite amount of money to the general revenue fund. It simply directs the state treasurer to transfer to the general revenue fund all sums of money in the state treasury to the credit of the numerous funds named in the act, including the board of barbers' fund. The fact, if it be a fact, that the records had not been adjusted to show that the surplus remaining in the board of barbers' fund at the close of 1931 and 1932 had been paid into the public school fund of the state, would not change the legal status of the surplus remaining in that fund at the end of each year. By express provision of Section 13525, R.S. 1929 (Mo. St.

Sec. 13525, p. 637), such surplus became the property of the public school fund with the ending of each year. It results that the act of February 28, 1933, did not transfer the \$25,308.60 from the board of barbers' fund to the general revenue fund, because that amount was not in the board of barbers' fund at that time. It had become the property of the public school fund of the state before the act of February 28, 1933, was passed. The only possible effect that act could have, so far as this case is concerned, was to transfer to the general revenue fund that part of the \$25,308.60 which was collected by the board during January and February, 1933, which, no doubt, was a very small part."

Although this case does not definitely decide the point now under discussion, we call your attention to the fact that the said Barber Board is maintained and functions, with respect to fees, similar to the State Board of Accountancy, and the State Barbers' Board is amenable to Section 1, supra.

In addition, the Legislature saw fit to make an appropriation for the State Board of Accountancy (Laws of Mo. 1933, p. 20), and in 1935 the Legislature again made an appropriation (Laws of Mo. 1935, p. 85, Sec. 1).

CONCLUSION

It is the opinion of this department that it was the intention of the Legislature in enacting Sec. 1, supra, to compel every state board, bureau, commission, etc. to pay into the treasury all of their fees and moneys, same to be placed to the credit of said board, bureau or commission, and to be used by said board, bureau or commission only when an appropriation was made by the legislature in conformity with Section 19, Article X of the Constitution of Missouri.

We are further of the opinion that the State Board of Accountancy is subject to the terms of Section 1, Laws of Missouri, 1933, page 415 and that all fees coming into the hands of said Board should be paid into the treasury in conformity

with said section, and that said Board is amenable to the terms of Section 1 the same as any other board, bureau or commission.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General.

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney General.

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