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FEES: Receipts derived from an insurance policy by State Teachers & College may be used to restore or build a building, and it is not necessary that the same be deposited with the State Treasurer.

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April 9, 1937 4-12

Honorable Eugene Fair  
President  
Northeast Missouri State Teachers College  
Kirksville, Missouri



Dear Sir:

This Department is in receipt of your letter of March 30, 1937, wherein you make the following inquiry and request an opinion thereon:

"I was in Jefferson City a few days ago and conversed with your Mr. Nolen.

"We had a small building on our campus which recently burned. It was adjudged a total loss on the part of the insurance adjuster and we have collected nearly all of the money from the insurance companies.

"Some of us here would like very much to restore the building as soon as possible. Are we within our rights, should we go ahead and expend the insurance money on the restoration without depositing it in the state treasurer's office?

"I will appreciate an answer from you or Mr. Nolen at your earliest convenience."

A number of years ago it appears that this same situation arose at the Northeast Missouri State Teachers College with reference to insurance collected as the result of a building having burned. At that time the

question arose as to whether or not the money derived from the insurance policies should be deposited in the State Treasury, or by retained by the college for the purpose of erecting another building. The decision is found in the case of State ex rel. Thompson v. Board of Regents, 305 Mo. 57.

Since the decision in the Thompson case the Legislature, Laws of Missouri, page 415, 1933 session, enacted the following section:

"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."

In deciding the question as to whether or not money derived from the insurance policy in the former fire at the Northeast Missouri Teachers College should be paid into the treasury, the court, in the Thompson decision, at l. c. 66, 67, said:

"Among other expenditures which have been made by the board in the exercise of its discretion is that for insurance upon the buildings and equipment of the college. Lacking express statutory authority for its action the beneficiary named in the policies thus obtained, was the board. When the loss occurred the amounts due under the contract was paid, as it should have been, to the board. In furtherance of its discretion it proceeded at once to expend a portion of the money thus received in repairs necessary for the protection of certain damaged buildings and to partially replace the library. When this writ was served the board was taking steps to replace the destroyed buildings. It is charged with no wrong doing or the usurpation of any power which has not at least received

tacit legislative and public approval for a half century. These facts are entitled to more than persuasive consideration in determining the question here seeking solution. Absent qualifying incidents they may arise to the dignity of ruling decisions. (State ex rel. v. Gordon, 266 Mo. 412; Folk v. St. Louis, 250 Mo. 141.) The sum of its offending is, that having made a valid contract in the State's interest and for its protection and the fruits of same having been received, that it shall pay this money into the State Treasury instead of using it to partially restore the buildings destroyed, and await legislative action authorizing its use for that purpose. Such a course disregarding the implication which the application for this writ involves as to the integrity and business judgment of the board after its years of experience, is fraught with injury to the college in interfering with its operation and thus lessening its opportunities for the advancement of higher education. The result of the granting of this writ will be to take money out of one of the State's hands and put it in another, which other must remain tightly closed until opened by a legislative sesame. Such a procedure can serve no beneficial purpose and savors of folly. Mandamus was never intended to subserve such an end as is here sought to be accomplished. A drastic writ at best, it is properly invoked to remedy 'rights that lack assistance or wrongs that need resistance.' It was never intended to be invoked simply to demonstrate the existence of the

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State's power, which, when thus exercised, cannot be denominated as other than tyranny."

Referring to the section of the law enacted by the Legislature and by analyzing the wording therein, the effect of the expression,

" All fees, funds and moneys from whatsoever source received by any department, etc.,"

it would appear that the section is broad enough to include the receipts of an insurance policy received by the college, but, we think, the words

"fees, funds and moneys from whatsoever source received,"

are restricted by the expression

"by virtue of any law or rule or regulation made in accordance with any law," .

It appears that the receipts from the insurance policy are not the result of any law or rule or regulation.

We are, therefore, of the opinion that the decision in the Thompson case is still controlling and it is not necessary for the funds derived from the insurance policy to be deposited in the State Treasurer's office.

Respectfully submitted,

OLLIVER W. NOLEN  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney General