

ELEEMOSYNARY INSTITUTIONS) Transfer of funds at end of biennium in
FUNDS) accordance with the Laws of Missouri 1933, X
Section 1, page 415.

December 1, 1937

12-15

FILED
45

Hon. W. Ed. Jameson
President, Board of Managers
State Eleemosynary Institutions
Jefferson City, Missouri

Dear Mr. Jameson:

We wish to acknowledge your request for an opinion wherein you state as follows:

"It has recently come to my attention that your department has made a ruling that affects our institutions to the extent that your department has ruled money on hand January first should be turned back to the general fund. Apparently your department did not take into consideration the source of these moneys or did not take into consideration the fact that the money was placed in our hands for a specific purpose.

May I call your attention to a case that was decided by the Supreme Court.

'In the case of State ex rel. vs. Regents, 305 Mo. 57 the Supreme Court clearly points out that money of this kind is not public funds within the contemplation of the constitutional requirements, such requirements Article 10, Section 15. Nor is it money such as would revert to the general revenue fund at the end of the biennium. This money was paid under the provisions of Section 8629, 8668 and 8669, R.S. Mo. 1929, to a specific institution for a specific purpose, either by counties or individuals for private patients. For the State of

Missouri to divert it to another purpose would not only violate the constitution of the State of Missouri but the constitution of the United States. It would be confiscation, without due process of law, of money and would be not only illegal but unconscionable."

In an opinion rendered by this Department to the State Treasurer under date of November 17, 1937, we held that the biennium of 1935, 1936 having ended, and assuming all warrants on same had been discharged, the unexpended balance remaining in the following funds should be transferred and placed to the credit of the ordinary revenue fund of the State by the State Treasurer:

State Hospital No. 1

State Hospital No. 2

State Hospital No. 3

State Hospital No. 4

Missouri State School

Missouri State Sanatorium.

Section 8666 R. S. Mo. 1929, establishes and creates the above funds and provides in part that:

"Whenever any moneys are paid into the state treasury under the provisions of this article, they shall be receipted for by the state treasurer and placed to the credit of the fund to which they respectively belong, so that money derived from each institution may be placed to the credit of the fund herein provided for that institution."

You cite us to the case of State ex rel. vs. Regents, 305 Mo. 57, 264 S. W. 698, and ask that we reconsider our ruling.

The "Regents" case, supra, was an original proceeding by mandamus brought by the State Treasurer to compel the Board of Regents of the N.E. Missouri State Teachers College to pay certain moneys into the State Treasury. The board had insured its property against loss and damage by fire, making itself beneficiary, and paying the premiums out of unappropriated money in its hands derived from students' fees.

The State Treasurer relied chiefly upon the following constitutional provisions:

Section 43, Article IV of the Missouri Constitution provides in part 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 to permit money to be drawn from the treasury, except in pursuance of regular appropriations made by law."

Section 15, Article X of the Missouri Constitution provides in part 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,* * *."

And upon the following statutory provisions which are applicable to the case at bar:

Section 8666 R. S. Missouri 1929 supra.

Section 8667 R. S. Missouri 1929, which provides how the funds are to be appropriated:

"Any moneys in the state treasury to the credit of any of the funds in this article created, paid therein under the provisions of this article, or so much thereof as may be necessary, shall be appropriated by the general assembly for the support or improvement of the institution to which the fund belongs."

The Court in the "Regents" case in commenting on Section 43, Article IV of the Missouri Constitution, supra (l. c. 64) states that:

"This provision, it will be seen from its terms, which are wisely chosen as a limitation upon power, is restricted to 'revenue collected and money received by the State from any source whatsoever.' By revenue, whether its meaning be measured by the general or the legal lexicographer, is meant the current income of the State from whatsoever source derived which is subject to appropriation for public uses. This current income may be derived from various sources as our numerous statutes attest, but no matter from what source derived, if required to be paid into the Treasury, it becomes revenue or state money; its classification as such being dependent upon specific legislative enactment or, as aptly put by the respondent, state money means money the state, in its sovereign capacity, is authorized to receive--the source of its authority being the Legislature." (Italics Ours)

The Court points out that during more than fifty years of the College's operation no General Assembly had sought to either regulate the collection or disposition of student's fees, and that such funds had been retained and expended by the college. The Court in its opinion states (l. c. 67) that:

"In the foregoing discussion of the constitutional provision invoked by relator, we have stated generally that no statute required the payment into the State Treasury of the money here in controversy; and, that a statutory enactment was a prerequisite to such payment and its receipt and deposit by the Treasurer to entitle it, under the Constitution, to be classified as state money." (Italics Ours).

It must be borne in mind that in the above case "no statute required the payment into the State Treasury of the money", and that such was necessary "to entitle it under the Constitution to be classified as state money."

Section 8608 R. S. Mo. 1929 sets up a revolving fund and provides that when it exceeds a certain sum it is to be paid into the State Treasury as follows:

"Upon a request from the board, the state auditor is hereby authorized and directed to draw a warrant payable to the steward of each of the institutions herein named, in an amount to be specified by the board, not to exceed, however, the sum of five thousand dollars, and the sum so specified shall be placed in the hands of the steward as a revolving fund to be used in the payment of the incidental expenses of the institution for which he has been appointed; and all moneys arising from the sale of live stock, produce, or other commodities produced by such institution shall be paid into said revolving fund, and whenever the amount thereof exceeds the sum of five thousand dollars, then such surplus shall be paid into the state treasury to the credit of the fund for the support of eleemosynary institutions. The steward shall keep a true and accurate account of all moneys received and of all moneys paid out of said fund and shall take and preserve vouchers for all expenditures therefrom. Whenever said fund shall fall

below the amount necessary to have on hand for the payment of incidental expenses, and within the limits of the maximum herein prescribed, the state auditor shall, upon request of the board, make additional allowances to said fund by drawing his warrant upon the state treasurer for the amount necessary to replenish said fund."

Section 8609 R. S. Missouri 1929, specifically provides that moneys received by any institution for support of patients, regardless of the source, be paid into the State treasury as follows:

"All moneys received by any institution for the support of patients therein, from whatever source received, shall be paid into the state treasury, and shall be placed to the credit of the fund for the support of the eleemosynary institutions."

Section 8668 R. S. Missouri 1929, provides for certain moneys to be paid into the treasury of the respective institutions:

"Hereafter, whenever, under any law of this state, or any rule or regulation made under the authority of any law of this state, any county, municipality, guardian, trustee or person is required to pay any sum or sums of money for the support of any person confined in any penal institution, or in any state hospital, reform, industrial or other eleemosynary institution belonging to this state, or established or maintained by this state, or is required to pay any sum for the maintenance, use or benefit of any such institution, the same shall be paid, as may be now or hereafter provided by law, into the treasury of the institution entitled thereto."

But Section 8669 R. S. Missouri 1929, provides that the above moneys must be transmitted by the treasurers of the institutions to the State treasury as follows:

"Whenever any sum or sums of money shall be paid into the treasury of any such institution under the provisions of the preceding section, or any law of this state, and all moneys which may be received into the treasury, or by any officer or officers of any such institution, derived from the employment of the inmates thereof, or from the use or disposition of any property belonging to such institution, and all moneys coming into the treasury, or into the hands of any officer or officers of any such institution from any other source whatever for the support or improvement of such institution, shall be forthwith entered on the books kept by the treasurer or other financial officer of such institution, so as to show the source from whence derived and from whom and upon what account it was received, and the same shall then be forthwith transmitted by such treasurer or other financial officer to the state treasury, and the state treasurer shall give his receipt therefor."

It is at once apparent that the instant case is readily distinguishable from the "Regents" case in that here we find a specific statute that the moneys received be transmitted to "the State treasury and the State Treasurer shall give his receipt therefor."

The above statutes are however broadened by a subsequent statutory enactment by the Legislature, found in the Laws of Missouri 1933, Section 1, page 415, as follows:

"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 thereof, 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."

The moneys, fees and funds received by the Board are placed in the State treasury to the credit of the particular purpose or fund for which collected and are subject to appropriation by the General Assembly for the particular purpose or fund collected. This is in accord with the above constitutional provisions. The Legislature

December 1, 1937.

has further directed that the unexpended balance at the end of the biennium and after all warrants on same have been discharged be transferred and placed to the credit of the ordinary revenue fund of the State by the State Treasurer.

From the foregoing we are of the opinion that the funds of the State Hospitals, Missouri State Sanatorium and Missouri Training School (Marshall) being derived from sources required by the statute to be paid into the state treasury are state moneys, and subject to the provisions of the Laws of Missouri 1933, Section 1, page 415 supra.

Respectfully submitted,

MAX WASSERMAN,
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

MW:MM