

BOARD OF PHARMACY:

Constitutional to transfer surplus funds
of Board of Pharmacy at close of bienium
to revenue funds.

July 19, 1939



Honorable Charles R. Bohrer
Secretary
Missouri Board of Pharmacy
West Plains, Missouri

Dear Sir:

We acknowledge receipt of your request for an opinion from this department which reads as follows:

"The Board of Pharmacy respectfully requests an opinion from your office concerning the constitutionality of Section 1, page 415, Laws of Missouri 1933, (a copy of which is attached), as it affects Board of Pharmacy funds, the transfer of these funds to the General Revenue Fund. Also an opinion from your office concerning the legality of the orders of the Secretary of State authorizing the State Treasurer to transfer balances remaining in the Board of Pharmacy fund at the end of any bienium period, and the legality of any transfer by the State Treasurer from the Board of Pharmacy fund to the General Revenue Fund under authority of any such orders or under the authority of the above mentioned statutes.

The Board of Pharmacy is supported in this request by the approval of the officers and Council of the Missouri Pharmaceutical Association."

The act to which you refer and a copy of which you enclose is found in Laws of Missouri 1933 at page 415 and which we must again quote for the purpose of this opinion, in order that it may be preserved in our opinion files:

"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 provisions 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."

July 19, 1939

In regard to the placing of the moneys collected by your board in the state treasury, we refer you to Laws of 1937, page 231, Section 13151c, which provides in part as follows:

" * * * * * All fees collected by the secretary for the examination of pharmacists and for the issuing of the permits authorized by this chapter, and for the renewal of certificates of registration and permits, and all other funds collected by the Secretary of the Board of Pharmacy under this chapter shall by him be paid into the State Treasurer monthly, and shall be placed to the credit of a fund for the use of the Board of Pharmacy. * * * * *"

This is in accordance with Section 15, Article 10 of the Constitution of Missouri, which provides that all moneys belonging to the state be deposited by the treasurer to the credit of the state for the benefit of the funds to which they belong. Section 19, Article 10 reads 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; nor unless such payment be made, or a warrant shall have issued therefor, within two years after the passage of such appropriation act; and every such law, making a new appropriation, or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object to which it is to be applied. * * * * *"

From the above it will be seen that regardless of any other statutory provisions, all funds belonging to the Board of Pharmacy must be deposited by the state treasurer in the name of the state to the credit of the Pharmacy Board, but that same can be withdrawn only in accordance with the biennial appropriations of the legislature.

July 19, 1939

In the case of State ex rel Davis v Smith, State Auditor, 75 S. W. (2d), page 828, we find a decision of our Supreme Court directly on the question which you raise. This was a case in which the power of the general assembly to transfer the balance remaining in the fees collected by the Board of Barber Examiners to the general revenue fund was discussed. The Board of Barber Examiners was included with the Pharmacy Board in the section found in Laws of 1933 at page 415. Prior to 1933, the surplus in the Board of Barber Examiners fund passed to the public school fund of the state. Chief Justice Frank in giving the opinion of the court said:

"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 * * * * * the acts simply direct 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."

Since the court in that case upheld the transfer by this same act of the surplus in the Barber Board fund, it is reasonable to presume that they would uphold the law as regards the Pharmacy fund, since both were included in the Act of 1933, and both derived their income from similar sources, that is, application fees and annual license renewal fees.

We conclude therefore, in view of the foregoing case, that the transferring of the balance remaining in the state treasury to the credit of the Board of Pharmacy fund into the general revenue fund was constitutional.

Respectfully submitted,

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Assistant Attorney-General

APPROVED:

COVELL R. HEWITT
(Acting) Attorney-General

RLH/ww