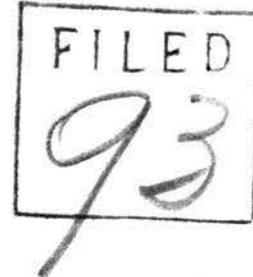


UNEMPLOYMENT COMPENSATION
FUND AND ADMINISTRATION
FUND:

Depositories and securities.

August 28, 1939

Honorable Harry G. Waltner, Jr.
Chief Counsel
Unemployment Compensation Commission
Jefferson City, Missouri



Dear Sir:

This will acknowledge receipt of your request for an opinion under date of August 15, 1939, which reads as follows:

"We have been requested by the Social Security Board to obtain the opinion of the Attorney General as to the securing of funds administered by this Commission by the deposit of collateral, and as to whether or not this practice is in accordance with the State Law. I am therefore requesting your opinion on this subject and so that you may be more familiar with the manner in which this is handled I outline to you the following facts:

"The Commission by appropriate action selects one or more banks as the depository for the funds in the clearing account and the benefit payment account of the Unemployment Compensation Fund. In making this selection, the Commission only considers those banks which have theretofore been determined by the State Treasurer to be state depositories by virtue of the awarding to them of a contract for the deposit of state funds. Upon such selection being made, a depository agreement is entered into between such bank and the Commission,

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which contract is in substantially the same form as the contract entered into between the State Treasurer and the Depository in respect to general funds of the State. The depository then deposits bonds in an amount required by the Commission to secure the deposit of funds, or more properly speaking, the payment of warrants issued by the Commission against such deposits. The amount established by the Commission and the type of securities required are as set out in Section 11469, R. S. Missouri 1929, as revised in 1937 and found at page 521, Laws of Missouri 1937. Any withdrawal of security or exchange of security is made only upon the written approval of the Commission. Because the Commission has no facilities to properly safeguard the bonds which are deposited to secure the funds and also as a matter of convenience to the depositories involved, the Commission has designated Robert W. Winn, State Treasurer, as escrow agent in respect to the securities deposited by one of the banks, and the Federal Reserve Bank of St. Louis as escrow agent for the deposit of the securities made by the other depository.

"In respect to the Unemployment Compensation Administration Fund, the procedure is different. When grants for the payment of the cost of administering the Unemployment Compensation Law are made by the Social Security Board, such funds are immediately transmitted to the State Treasurer. The State Treasurer then handles such funds as other state funds, securing such deposits generally by the collateral supplied by the bank covering all state funds which the bank or banks may have. The general depository contracts entered into by the Treasurer with the depositories cover these funds as well as other state funds and the collateral securing

this special fund is treated in exactly the same manner as the collateral securing all state funds. It is my understanding that no separate collateral account is maintained by the state treasurer in respect to this particular fund. The requiring of collateral, the authorization of exchange of collateral is handled by the Governor, the Attorney General and the State Treasurer in the same manner as is handled for all other state funds, such collateral in fact being in most cases covering other state funds as well as the Unemployment Compensation Administration Fund."

The above discloses the present procedure by which the Unemployment Compensation Commission deposits various funds, and also shows the requirements by the Commission of the depositories as to security for said funds.

We shall first consider the handling of the Unemployment Compensation Fund.

Section 12, page 595, Laws of 1937, of the Unemployment Compensation Act, as amended by the 60th General Assembly in Senate Bill No. 346, requires the moneys received under this fund and known as a clearing account and a benefit account, which is all of the above Unemployment Compensation Fund, as we read the Act, with the exception of the Unemployment Trust Fund account, which this Section 12 has provided is to be deposited with the Secretary of the Treasury of the United States of America, shall be deposited in any public depository in which general funds of the state may be deposited. This provision, in part, reads as follows:

"Except as herein otherwise provided, moneys in the clearing and benefit accounts may be deposited by the treasurer, under the discretion of the commission, in any bank or public depository in which general funds of the state may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund."

Unquestionably, from a reading of Section 12, supra, it was the intention of the Legislature that this fund should be placed in a depository which may be used by the state for the deposit of general revenue funds.

Therefore, it becomes the duty of the Commission, under this provision, to select for this particular fund one or more depositories that have been selected and are being used by the state for the deposit of general revenue funds and no other.

After the selection of a depository by the Commission, the actual deposit therein must be secured by collateral. This is specifically required by Section 12 (b) of Senate Bill No. 346 as passed by the 60th General Assembly, which became effective July 1, 1939. The pertinent portion of Section 12 (b) reads as follows:

" * * * All moneys payable to the fund, upon receipt thereof by the commission, shall be forwarded to the treasurer who shall immediately deposit them in the clearing account. * * * The benefit account shall consist of all moneys requisitioned from the Missouri account in the federal unemployment trust fund. Except as herein otherwise provided, moneys in the clearing and benefit accounts may be deposited by the treasurer, under the discretion of the commission, in any bank or public depository in which general funds of the state may be deposited, but no public deposit insurance charge or premium shall be paid out of the funds. All funds required by this Act to be deposited in any state depository shall be secured by said depository to the same extent and in the same manner as is or may hereafter be required by Section 11469, R. S. Missouri 1929, and all the amendments thereto; Provided, that the Commission shall do those acts directed to be done by

the Governor, Attorney General and State Treasurer, or any of them, under said section, which are not inconsistent with the other provisions of this Act. * * *

Section 12 (b), supra, specifically refers to Section 11469, R. S. Mo. 1929, and directs that all funds deposited shall be secured to the same extent and in the same manner as required by Section 11469, R. S. Mo. 1929, and all amendments thereto.

Section 11469, R. S. Mo. 1929, was amended, page 521, Laws of 1937, and now reads as follows:

"For the security of the funds deposited by the Treasurer under the provisions of Articles 1 and 2 of this Chapter, the Governor, the Attorney General and the Treasurer shall require of said selected and approved banks or banking institutions as security for the safe-keeping and payment of said deposits, (1) bonds or other obligations of the United States, or (2) bonds or other obligations of the State of Missouri, or (3) bonds of any city in this state having a population of not less than two thousand, or (4) the bonds of any county in this state, or (5) the approved registered bonds of any school district situated in any city, town or village in this state, or (6) the approved registered bonds of any special road district in this state, or (7) the state bonds of any state, or (8) the bonds of any Federal Land Bank, or (9) the bonds of any Federal Intermediate Credit Bank, or (10) the bonds of the Federal Farm Mortgage Corporations, or (11) the bonds of the Home Owners Loan Corporation, or (12) the bonds or other obligations of the Reconstruction Finance Corporation, or (13) the bonds of the Federal Home Loan Banks, or (14) securities issued under the provisions

of the Tennessee Valley Authority Act and guaranteed by the government of the United States, or (15) securities issued under the provisions of the Federal Housing Act and guaranteed by the government of the United States, or (16) any bonds or other obligations guaranteed as to payment of principal and interest by the government of the United States to an amount at least equal in value to one hundred per centum of the amount of the deposits with said banks or banking institutions, less \$5000.00 where the depository is insured by the Federal Deposit Insurance Corporation; which bonds shall be delivered to the State Treasurer and receipted for by him and retained by him in the vaults of the State Treasury of this state or in the vaults of such banks or trust companies or other safe depository as the Governor, Attorney General and Treasurer may agree upon; and if in any case, or at any time, such bonds are not satisfactory security to the Governor and Attorney General, for deposits made under Articles 1 and 2 of this Chapter, they may require such additional security to be given as shall be satisfactory to them, which said bonds, or any part thereof, may from time to time be withdrawn on the written consent of the Governor, Attorney General and Treasurer; and the Governor, Attorney General and State Treasurer shall, from time to time, inspect such bonds and see that the same are actually kept in the vaults of the State Treasury, or in the vaults of such banks or bank, trust company or trust companies, other than the bank or banks, trust company or trust companies, selected as the state depositories, as the Governor, Attorney General and State Treasurer may have duly agreed upon; provided, that a sufficient amount of said bonds to secure said deposits shall always be kept in the Treasury or in such selected depository, and in the event that such bank or banks or banking institutions of deposit shall fail to pay such deposits, or any part thereof, on the check or

checks of the State Treasurer, then it shall be the duty of the State Treasurer to forthwith convert such bonds into money and disburse the same according to law, upon the warrants drawn by the State Auditor upon the funds for which said bonds are security. Any banking institution making deposits of bonds with the State Treasurer under the provisions of Articles 1 and 2 of this Chapter may cause such bonds to be endorsed or stamped, as they may deem proper, so as to show that they are deposited as collateral, and are not transferable except upon the conditions of Articles 1 and 2 of this Chapter. The Treasurer shall have authority to employ an additional clerk to assist in carrying out the provisions of this section at a salary not to exceed One Hundred Fifty (\$150.00) Dollars per month."

Therefore, in view of Section 12 of the Unemployment Compensation Act, as amended by the 60th General Assembly, this fund must be secured in the same manner as is required of state funds under Section 11469, supra. The Commission, under Section 12, supra, is required to do those acts directed to be done by the Governor, Attorney General and State Treasurer under Section 11469, supra, which are not inconsistent with the other provisions of the Unemployment Compensation Act. To comply with Section 11469, supra, the Commission should require the depository selected to give security in an amount equal in value to one hundred per centum of the amount of the deposit with the depository, less the sum of \$5,000.00 when guaranteed by the Federal Deposit Insurance Corporation. This security must consist of bonds as provided in Section 11469, supra. Such security given shall be retained by the Commission in the vaults of the State Treasury, or in the vaults of such bank or trust company, or other safe depository, as the Commission may agree upon. When necessary, the Commission shall require additional security.

We shall next consider the proper manner of handling the Unemployment Compensation Administration Fund.

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Section 13 (a) of the Unemployment Compensation Act (Laws of 1937, page 597), in part, reads as follows:

" * * * The fund shall consist of all moneys appropriated by this state, and all moneys received from the United States of America, or any agency thereof, including the Social Security Board and the United States Employment Service, or from any other source, for such purpose. All moneys in this fund shall be deposited, administered and disbursed, in the same manner and under the same conditions and requirements as is provided by law, for other special funds in the state treasury.
* * * "

Under the foregoing provision, this fund shall be treated as other state funds. The State Treasurer shall secure such fund, as other state funds, when deposited. This should be done, as we have already shown, by requiring the security of the character and in the amount as provided in Section 11469, supra.

Respectfully submitted

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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