

SOCIAL SECURITY: Money received from sale of containers must be placed in relief fund and must be appropriated.

May 1, 1940

Honorable George I. Haworth
Administrator
State Social Security Commission
Jefferson City, Missouri



Dear Sir:

This department is in receipt of your request for an opinion which reads as follows:

"Under Public Act No. 320, approved August 24, 1935, the Federal Surplus Commodities Corporation was empowered by Congress to purchase surplus agricultural commodities to be donated to the states for relief purposes. Commodities are allocated to the various state welfare agencies by the Corporation on the condition that the entire quantity will be distributed outside the normal channels of trade and commerce and in a manner which will prevent competition with the same or like commodities in commercial channels.

"Large quantities of surplus commodities have been donated to this State in the past. The containers in which the commodities are received, such as sacks, boxes, barrels, packing material, et cetera, are donated to the State by the Federal Surplus Commodities Corporation under the condition that if the containers are sold, the proceeds from such sale shall be used for relief purposes only.

"The Laws of Missouri, 1933, page 415, provide that all funds received

by a board or commission shall be deposited in the State Treasury and shall be subject to appropriation by the General Assembly. We have complied with this section of our laws and have deposited all funds derived from the sale of containers in the State Treasury. The Federal Surplus Commodities Corporation objects to this procedure on the ground that such money is not being used for relief purposes, but is being deposited in the general revenue fund of the State.

"Section 15, Article X, Constitution of Missouri, reads in part as follows:

"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, in such bank or banks as he may, from time to time, with the approval of the Governor and Attorney-General select."

"Section 43, Article IV, Constitution of Missouri, reads in part as follows:

"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 19, Article X, Constitution of Missouri, reads in part 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.'

QUESTION

"Do funds received from the sale of containers donated under the above conditions by the Federal Surplus Commodities Corporation become state funds and have to be deposited in the State Treasury, or can such funds be spent by this Commission for further relief purposes?

"Your attention is respectfully directed to Section 4 of the Social Security Law, which in part provides:

" '* * * to cooperate with the United States Government in matters of mutual concern pertaining to any duties wherein the State Commission is acting as a state agency, including the adoption of such methods of administration as are found by the United States Government to be necessary for the efficient operation of state plans hereunder; * * * '

"In an opinion from your department, dated January 7, 1937 and found in Appendix, House and Senate Journals, 59th General Assembly, Volume II, addressed to the Honorable Allen McReynolds, it was stated that certain moneys were not state funds because they were not intended by the Legislature to be such and that it was not necessary for such funds to be deposited in the State Treasury."

Section 20 of the Social Security Act, Laws of Missouri, 1937, page 476, provides as follows:

"The State Treasurer shall be treasurer and custodian of all funds and moneys of the State Commission and shall issue checks upon such fund or funds in accordance with such rules and regulations as the State Commission shall prescribe. There is hereby established as a special fund, separate and apart from the public moneys of this state, the following:

- "(1) Old age assistance fund;
- (2) aid to dependent children fund;
- (3) relief fund;
- (4) child welfare service fund;
- (5) State Social Security Commission administration fund.

The relief fund shall consist of moneys appropriated by the state, and such moneys as may be received from the Federal Government or other sources for aid or relief in cases of public calamity. All expenditures for aid or relief in cases of public calamity shall be paid from this fund. *****"

It is clear from a reading of the above statute that moneys received from the Federal Government for relief should not go in to a general revenue fund but should go in to "a special fund separate and apart from the public moneys of this state." Such money is set aside in a trust fund of which the State Treasurer is the custodian. In view of the status of this fund, at the end of the biennium it does not lapse into the general revenue fund but remains "separate and apart" to be used only for relief. However, we call your attention to Article IV of Section 43 of the Constitution of Missouri, which provides in part as follows:

Hon. George I. Haworth

(5)

May 1, 1940

"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."

And Article X, Section 19 of the Constitution of Missouri which reads:

"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."

Therefore, this money must be appropriated by the General Assembly and unless there is an appropriation to cover such funds, the same cannot be used. State ex rel. v. Gordon, 236 Mo. 142, l. c. 158.

CONCLUSION.

It is, therefore, the opinion of this department that moneys received from the sale of containers received from the Federal Government, the proceeds of which are to be used for relief purposes, must be placed in the relief fund in the state treasury. This relief fund is held by the State Treasurer in trust separate and apart and is not a part of the general revenue.

It is further the opinion of this department that this relief fund must be appropriated before it can be used.

Respectfully submitted

APPROVED:

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