

STATE TREASURER: Disposition of certain moneys paid into state treasury.

January 2, 1940

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Honorable Robert W. Winn
State Treasurer
Jefferson City, Missouri

Dear Mr. Winn:

This will acknowledge receipt of your letter of December 29, 1939, which reads as follows:

"This office is in receipt of a draft Treasurer of the United States in the amount of \$1,549.55, with the following information:

"On account of payment due the State of Missouri of 25 per cent of the receipts from leases of Flood Control Lands pursuant to the provisions of the Act of June 28, 1938, (52 Stat. 1220) Chief of Engineers Reference 7510 (L Miss. R)

"21 x 6090 payments to States, Flood Control Act, June 28, 1939.

"Of the total amount \$1,841.65 due, the sum of \$292.10 is withheld on account of indebtedness to the State of Missouri in the amount of \$292.10 for taxes unlawfully collected on gasoline purchased by Federal employees traveling within the State of Missouri for use in the exercise of governmental functions.

"We also received today a draft from the Treasurer of the United States in the amount of \$2.81 with the following information:

"On account of five per cent of the net proceeds derived from the sale of Public Lands, within the State of Missouri, during the fiscal year ended June 30, 1937, due the State in accordance with the provisions of the Act of March 6, 1920. (3 Stat. 545) Department of the Interior General Land Office.

"1490511 payment to the States of five per cent of proceeds from sales of Public Lands (Receipted Limitation) 1939

"We respectfully ask an opinion from your office as to what fund these drafts should be credited."

I.

RECEIPTS FROM LEASES OF FLOOD CONTROL LANDS.

At page 1221, Vol. 52, United States Statutes at Large, is found the following provision:

"In the event the United States acquires or owns title to any lands in fee simple under the provisions of the Act of May 15, 1928, as amended and supplemented, the United States may retain the ownership thereof, or any part thereof instead of turning over such lands to the ownership of States or local interests as provided in section 4 of said Act of May 15, 1928, and may lease such lands: Provided, That 25 per centum of all moneys received and deposited in the Treasury of the United States during any fiscal year on account of such leases shall be paid, at the end of such year, by the Secretary of the Treasury to the State in which such property is situated, to be expended as the State legis-

lature may prescribe for the benefit of the public schools and public roads of the county or counties in which such property is situated: Provided further, That when such property is situated in more than one State or county the distributive share to each from the proceeds of such property shall be proportional to its area therein: * * *

It will be seen from the above that the draft for \$1,549.55, which represents receipts from leases of flood control lands in this state, is earmarked by Congress for use of the public schools and public roads of the county or counties in which such leased property is situated. We assume that you can ascertain from the Chief of Engineers as to what county or counties this leased land is in and what proportion of it is in each county. If you ascertain that all of the leased land is in one county, you should open up an account to the credit of the public schools and public roads of that county and credit said account with the proceeds of this draft. If you find that the land lies in more than one county, you would have to determine the proportionate part to which each county was entitled on the basis of the ratio the amount of leased land in each county bears to the total amount of leased lands represented by this draft, and open up accounts for each county accordingly. The legislature of Missouri would then appropriate this account or these accounts to the use of the public schools and public roads of the respective counties.

We might suggest in this connection that the proceeds from the leased lands in question are earmarked for a particular purpose, and we know of no authority by which the Treasurer of the United States could take any part of these proceeds and apply same to any other purpose. We, therefore, think that the deduction of \$292.10 from the amount of the proceeds is irregular, and we suggest that you make a demand of the Treasurer for a payment of said deduction also.

CONCLUSION

It is, therefore, the opinion of this office that the draft for \$1,549.55, representing 25 per cent of the receipts from leases of flood control lands pursuant to the provisions of the Act of June 28, 1938 (52 Stat. 1220), should be credited to the public schools and public roads of the county or counties in which said leased lands lie in proportion to the ratio which the acreage of said leased lands in any county bears to the total amount of leased lands represented by said payment.

II.

RECEIPTS FROM SALE OF PUBLIC LANDS.

The draft for \$2.81 referred to in your letter represents receipts from the sale of public lands pursuant to the provisions of an Act of March 6, 1920.

At page 547 of Vol. 3, United States Statutes at Large, is found the following provision of said Act of March 6, 1920:

"Third. That five per cent of the net proceeds of the sale of lands lying within the said territory or state, and which shall be sold by Congress, from and after the first day of January next, after deducting all expenses incident to the same, shall be reserved for making public roads and canals, of which three fifths shall be applied to those objects within the state, under the direction of the legislature thereof; and the other two fifths in defraying, under the direction of Congress, the expenses to be incurred in making of a road or roads, canal or canals, leading to the said state."

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While the foregoing law provides that the draft in question should be applied for making public roads and canals, yet we think that since the construction of canals is no longer a program or activity in this state and any money set aside for that purpose would ultimately not be used, all of said money should be applied to the making of public roads. That being true, the draft in question should, in our opinion, be credited to the state road fund in accordance with Section 8147, page 320, Laws of 1931, which reads in part as follows:

"There is hereby created a state road fund which shall receive all monies from the sale of bonds and all monies given the state by the United States government for road purposes and the balance transferred from the state road bond interest and sinking fund as provided in section 8145 of this article."

CONCLUSION

It is, therefore, the opinion of this office that the draft for \$2.81, representing the net proceeds derived from the sale of public lands within the state of Missouri during the fiscal year ending June 30, 1937, due the state in accordance with the provisions of an Act of March 6, 1920 (3 Stat. 545), should be credited to the state road fund.

Respectfully submitted

HARRY H. KAY
Assistant Attorney General

APPROVED:

W. J. BURKE
(Acting) Attorney General

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