

FUND COMMISSIONERS: No authority to transfer funds from general revenue funds to unemployment compensation administration fund; said transfer may be made by State Auditor and State Treasurer.

August 29, 1941

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Honorable Wilson Bell
State Treasurer
Jefferson City, Missouri



Attention: Mr. A. L. Jones,
Bond Superintendent

Dear Sir:

We are in receipt of your request for an opinion under date of August 21st, wherein you state as follows:

"At the meeting of the State Board of Fund Commissioners held on the 20th of August, 1941, there was presented a letter from Honorable Elmer John Keitel, Sr., Chairman of the Unemployment Compensation Commission of Missouri as follows:

"Under Section 64A of House Bill No. 581 the Board of Fund Commissioners is authorized and directed to transfer from the appropriation out of the general fund which is therein provided, to the Unemployment Compensation Administration Fund, such amounts as may be requested by the Unemployment Compensation Commission.

"You are requested to transfer immediately the sum of \$45,000 from the said appropriation out of general revenue fund. This transfer will represent a pro rata portion of the appropriation for the period July 1 to December 31, 1941."

"We would like to have an opinion as to whether it is necessary for the transfer of Funds from one account to another on the books of the State Treasurer and the State Auditor, to be approved by the Board of Fund Commissioners, or whether these transfers can be made by these respective Officials."

Section 64a of House Bill 581, to which you refer, provides as follows:

"Unemployment Compensation Commission-- Employment Service Fund. There is hereby appropriated out of the State Treasury, chargeable to the General Revenue Fund, the sum of One Hundred Thirty-five Thousand Dollars (\$135,000.00) to the Unemployment Compensation Administration Fund for the biennium 1941-1942, and the Board of Fund Commissioners, when requested by the Unemployment Compensation Commission, is hereby authorized and directed to make transfers of funds from the General Revenue Fund to the Unemployment Compensation Administration fund until said sums shall have been so transferred."

The special fund designated in the above appropriation act as the unemployment compensation administration fund was created by the 59th General Assembly, and is found in the 1939 Missouri Session Acts, Section 13, page 597. The above section was carried forward in the 1939 Revised Statutes of Missouri, Section 9434, and was recently amended by Senate Bill 110, and approved by Governor Donnell on June 21, 1941, together with an emergency clause.

Section 9434, sub-section (a), after amendment, provides as follows:

"Unemployment compensation administration fund-- nature and purpose. --(a) There is hereby created in the state treasury a special fund to be known as the unemployment compensation administration fund."

All moneys in this fund shall be continuously available to the commission for expenditure in accordance with the provisions of this law, and shall not lapse at any time or be transferred to any other fund, and shall be expended solely for the purpose of defraying the cost of the administration of this law, and for no other purpose whatsoever. 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, and shall also include any moneys received from any agency of the United States or any other state as compensation for services or facilities supplied to such agency, any amounts received pursuant to any surety bond or insurance policy or from other sources from losses sustained by the unemployment compensation administration fund or by reason of damages to equipment or supplies purchased from moneys in such fund and any proceeds realized from the sale or disposition from any such equipment or supplies which may no longer be necessary for the proper administration of this law. 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. The state treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the unemployment compensation administration fund provided for under this law."

The underscored portion of the above section is the same as when the original act was passed. We have examined our statutes carefully and we fail to find a legislative direction as to the manner, conditions and requirements for the

deposit, administration and disbursement for special funds in the state treasury.

We have also examined our statute relating to the powers and duties of the Board of Fund Commissioners and fail to find any express requirement directing said board to transfer funds from the general revenue fund to the unemployment compensation administration fund.

We are aware of Section 13010, R. S. Mo. 1939, which establishes a Treasury Department embracing the "offices of State Treasurer and State Auditor," and also of Section 13110, R. S. Mo. 1939, which empowers the Board of Fund Commissioners to "exercise a supervisory control over the Treasury Department" and "do and perform all such acts and things as may be required of them by law."

Can the authorization to the Board of Fund Commissioners as provided for in the above appropriation act to transfer funds, be said to be an act or thing required of them by law?

The answer is obviously in the negative, for the reason that "legislation of a general character cannot be included in an appropriation bill." State ex rel. Davis v. Smith, 75 S. W. (2d) 828. Again, in the case of State v. Thompson, 289 S. W. 338, l. c. 341, the court after pointing out that an appropriation bill is just what the terminology imports, and no more, said:

"As has been observed in well-reasoned cases, if the practice of incorporating legislation of general character in an appropriation bill should be allowed, then all sorts of ill conceived, questionable, if not vicious, legislation could be proposed with the threat, too, that, if not assented to and passed, the appropriations would be defeated. The possibilities of such legislation and this court's condemnation thereof are well illustrated in the case of State ex rel. Tolerton v. Gordon, 236 Mo. 142, 139 S. W. 403, as well as the following cases from other states; State ex rel. v. Carr, 129 Ind. 44, 23 N. E. 88, 13 L. R. A. 177, 28 Am. St. Rep. 163; Com. v. Gregg, 161 Pa. 582, 29 A. 297."

The fact that the Board is given supervisory control over the Treasury Department cannot be construed as a grant or authority to transfer funds, since the Legislature has expressly designated when transfers may be made by the Board.

Section 13122, R. S. Mo. 1939, provides as follows:

"It shall be the duty of the board of fund commissioners, by order, to direct the state auditor and state treasurer to transfer, upon their books, at such times as they shall deem proper, the surplus in the state interest fund into the state sinking fund; and they shall, also, by order, direct the state auditor and state treasurer to pay the maturing interest on the certificates of indebtedness held in trust by the state for the 'state school fund' and 'state seminary fund,' by transferring the necessary amounts, on their books, from the state interest fund to 'state school moneys' and 'state seminary moneys.'"

The maxim "expressio unius est exclusio alterius," which means that the expression of one thing in a statute is the exclusion of another, is particularly applicable.

There being no authority for the transfer of the above fund by the Board of Fund Commissioners, the question arises whether the transfer can be made by the State Auditor and State Treasurer.

Section 13026, R. S. Mo. 1939, provides that the State Auditor shall, among other duties:

"* * *; second, draw all warrants upon the treasury for money, except only in cases otherwise expressly provided by law; third, express in the body of every warrant which he may draw upon the treasury the particular fund, appropriated by law, out of which the same is to be paid; * * *"

Section 13047, R. S. Mo. 1939, provides the duties of the State Treasurer in part as follows:

"The state treasurer shall receive and keep, as provided by law, all the moneys of the state not expressly required by law to be received and kept by some other person; disburse the public moneys upon warrants drawn on the treasury according to law, and within the time limited in the Constitution, and not otherwise; keep a just and true account of the funds and the appropriations made therefrom by law, and the disbursements made thereunder.
* * * *"

Since the Auditor must draw warrants for money upon the Treasurer out of the particular fund appropriated by law and the Treasurer is required to disburse the public moneys upon warrants drawn on the Treasurer according to law, they would have ample authority to transfer funds appropriated by law from the general revenue to a special fund created and set aside by statute for a particular purpose.

We are of the opinion that the Board of Fund Commissioners have no authority to transfer funds from the general revenue fund to the unemployment compensation administration fund as provided for in Section 64a of House Bill 581, but that said transfer may be made by the Treasury Department consisting of the State Auditor and State Treasurer.

Respectfully submitted,

MAX WASSERMAN
Assistant Attorney-General

APPROVED:

VANE C. THURLO
(Acting) Attorney-General