

PENAL INSTITUTIONS--OUT-
STANDING DUPLICATE DRAFT:

Statute provides no way to clear
records on outstanding duplicate
draft.

January 11, 1944



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Mr. K. Autenrieth
Credit and Office Manager
Jefferson City, Mo.

Dear Sir:

We have for answer your request for an official opinion
dated December 28, 1943, which is as follows:

"On January 8, 1943, State Treasurers Check
No. 547352, \$3,676.17, was issued to J.
Greenebaum Tanning Company, Chicago, Illi-
nois, paying invoice of 11-9-42, \$84.38 and
11-30-42, \$3,666.82, less discount of \$75.03.
Also on January 14, 1943, State Treasurer
Check #55203, for \$3,593.48, was issued pay-
ing invoice of 11-30-42, \$3,666.82, less dis-
count of \$73.34. This was a duplicate pay-
ment of one of the invoices covered by State
Treasurers check #547352 of January 8, 1943.

"As soon as the error was discovered the State
Treasurer was notified to stop payment and
Greenebaum Tanning Company was notified to
return the check as soon as received. They
advised immediately that Check #55203 had
not been received and up to the present has
not shown up.

"Our records show that payment has been made
from our funds and the State Treasurers re-
cords show the Check #55203 as outstanding.
They state they have no authority to issue
cancellation on this check and we know of
no way to clear our records unless they give
us that authority.

"We would like to have your opinion."

We understand from the above request that the question
is "How can the Commissioner of Industries clear his records
as to the outstanding check No. 55203?"

For the purpose of this opinion we will assume that the second check issued by the State Treasurer was issued in conformity to the statutory provisions and State Constitution. The pertinent sections in regard thereto are as follows, Section 13042, R. S. Mo., 1939, provides in part as follows:

"In all cases of accounts audited and allowed against the state, and in all cases of grants, salaries, pay and expenses allowed by law, the auditor shall draw a warrant on the treasurer for the amount due.* * *"

Section 13047, R. S. Mo., 1939, provides 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.* * *"

Section 13054, R. S. Mo., 1939, is as follows:

"Whenever a warrant shall be presented to the treasurer it shall be his duty to pay the same in lawful money, or by giving a check on some depository of state funds, attesting the same by affixing his seal of office to said check: Provided, said warrant is properly drawn against a legal appropriation, and does not exceed the amount thereof; and no money shall be drawn from a depository of state funds in any other manner. (R.S. 1929, Sect. 11429.)"

Article 10, Section 15, Constitution of Missouri, is 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, the said bank or banks giving security satisfactory to the Governor and Attorney-General, for the safe-keeping and payment of such deposit, when demanded by the State Treasurer on his checks--such bank to pay a bonus for the use of such deposits not less than the bonus paid by other banks for similar deposits; and the same, together with such interest and profits as may accrue thereon, shall be disbursed by said Treasurer for the purposes of the State, according to law, upon warrants drawn by the State Auditor, and not otherwise."

It can be seen from the above that the Auditor's warrant is the basis for paying state claims from the State Treasury. Section 10907, R. S. Mo., 1939, provides in part as follows:

"The auditor shall keep accounts showing the appropriations and allotments. Such accounts shall show all charges and obligations incurred against such appropriations and allotments.* * *"

"* * * The auditor shall be liable personally and on his bond for any certification in excess of any allotment or in excess of the cash balance available.* * *"

Mr. K. Autenrieth

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C O N C L U S I O N

In the light of the above it is the opinion of this office that when a warrant is issued by the Auditor, and a check issued by the Treasurer on the basis of such warrant, the outstanding check must remain as a charge against the appropriation, until the close of the biennium. There is no authority for the Treasurer or Auditor to write off the additional check, until it is produced. Therefore, the appropriation has to stand charged with both warrants.

Respectfully submitted,

GAYLORD WILKINS
Assistant Attorney General

GW:DC

APPROVED:

ROY MCKITTRICK
Attorney General