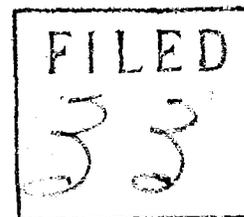


WORKMEN  
DIVISION

COMPENSATION

Relating to tax moneys collected from insurance carriers and the transferal of the Division fund to the credit of the ordinary revenue fund of the state.

September 26, 1947



Mr. Spencer H. Givens, Director  
Division of Workmen's Compensation  
Jefferson City, Missouri

Dear Mr. Givens:

This is in reply to your letter of August 26, 1947, wherein you requested an opinion relative to certain funds of the Workmen's Compensation Division. Said letter reads as follows:

"May we have your opinion on the status of the Workmen's Compensation Fund as established by Chapter 29, R. S. Mo., 1939 (Missouri Workmen's Compensation Law), in light of the following facts and questions:

"Prior to the reorganization of the state government under the new Constitution, balances in the Workmen's Compensation Fund, after a certain specified time following the end of an appropriation period, were taken over by the General Revenue Fund, by authority of a general statute.

"Section 3757 of the Workmen's Compensation Law, which deals with the Workmen's Compensation Fund, was amended by the Sixty-Third General Assembly, and became effective July 3, 1946, when approved by the Governor. Among other things, this section provides that 'upon receiving said money the state treasurer shall place the whole thereof to the credit of the fund for the support of the Missouri workmen's compensation division.' No mention is here made of transferring any part of this fund to the general revenue, except in the latter part of the section which provides for a transferral only of a refund to pay back any appropriation out of

the general revenue, 'as the division may from time to time determine.'

"Section 17 of Senate Bill No. 237, also enacted by the Sixty-Third General Assembly, (page 1982 of the Laws of Missouri, 1945) was approved April 26, 1946, and became effective July 1, 1946--three days prior to the effective date of Section 3757 mentioned above. It is the statute that provides generally for fund balances to be transferred to the 'ordinary revenue fund of the state.'

"We feel that Section 3757, R. S. Mo., 1939, having been approved and made effective after the section providing for fund transferrals, governs the Workmen's Compensation Fund, and that transferrals from it cannot be made, except to repay appropriations from the General Revenue Fund."

Section 3757, R.S. Mo. 1939, under the chapter relating to Workmen's Compensation, dealt with the assessment of a tax upon the various insurance carriers, and the payment of such amount annually into the state treasury. Said section concluded:

"\* \* \* Upon receiving said money the state treasurer shall place the whole thereof to the credit of the fund for the support of the Missouri workmen's compensation commission. As the commission may from time to time determine, the state auditor and state treasurer shall make transfers to the general revenue fund from the fund for the support of the Missouri workmen's compensation commission, so as to refund any appropriations made to said fund out of the general revenue fund."

Senate Bill No. 248, passed by the 63rd General Assembly, Missouri Laws of 1945, page 1996, repealed, among others, Section 3757 of the 1939 Revised Statutes. Section 3757 of said bill, Missouri Laws of 1945, page 2002, contains the same provision as to an assessment of a tax upon the various insurance carriers, and provides for the annual payment of such amounts into the Revenue Department. Said section concludes:

"\* \* \* Upon receiving said money the state treasurer shall place the whole thereof to the credit of the fund for the support of the Missouri workmen's compensation division. As the division may from time to time determine, the state auditor and state treasurer shall make transfers to the general revenue fund from the fund for the support of the Missouri workmen's compensation division, so as to refund any appropriations made to said fund out of the general revenue fund."

Also enacted by the 63rd General Assembly was Senate Bill No. 237, Missouri Laws of 1945, page 1977, relating to the state treasurer. Section 17 of said bill, which in its general provisions is the same as Section 13051, R.S. Mo. 1939, and which was repealed by the 63rd General Assembly, reads as follows:

"All fees, funds and moneys from whatsoever source received by any department, board, bureau, commission, institution, official or agency of the state government by virtue of any law or rule or regulation made in accordance with any law, shall, by the official authorized to receive same, and at stated intervals be placed in the state treasury to the credit of the particular purpose or fund for which collected, and shall be subject to appropriation by the General Assembly for the particular purpose or fund for which collected during the biennium in which collected and appropriated. The unexpended balance remaining in all such funds (except such unexpended balance as may remain in any fund authorized, collected and expended by virtue of the provisions of the constitution of this state), shall at the end of the biennium and after all warrants on same have been discharged and the appropriation thereof has lapsed, be transferred and placed to the credit of the ordinary revenue fund of the state by the state treasurer.\* \* \*"

It can thus be observed that we have these two acts passed by the same Legislature, and to an extent dealing with the same subject matter--Senate Bill No. 237 relating to the state treasurer, Section 17 thereof providing for the deposit in the ordinary revenue fund of the state treasury of all fees, funds and moneys from whatsoever source; and Senate Bill No. 248 relating to Workmen's Compensation, Section 3757 thereof providing that the tax money received from the insurance carriers be placed to the credit of the fund of the Division. In other words, it might appear that Section 3757, supra, is inconsistent with Section 17, supra, in that it does not provide for the transfer of the moneys in the fund to the general revenue fund, whereas, Section 17 does so provide. In *Gasconade County v. Gordon*, 241 Mo. 569, the court said at l.c. 581:

"In 36 Cyc. 1151, the general rule is thus announced: 'The rule that statutes in pari materia should be construed together applies with peculiar force to statutes passed at the same session of the Legislature; it is to be presumed that such acts are imbued with the same spirit and actuated by the same policy, and they are to be construed together as if parts of the same act. They should be so construed, if possible, as to harmonize, and force and effect should be given to the provisions of each; if, however, they are necessarily inconsistent, a statute which deals with the common subject-matter in a minute and particular way will prevail over one of a more general nature; and of two inconsistent statutes enacted at the same session, that will prevail which takes effect at the later date.'"

At l.c. 583 the court continued:

"It is easy to see why the rule of construction pertaining to statutes in pari materia applies with peculiar force to statutes passed at the same session of a legislative body. In such case we have in fact the same minds acting upon the one subject. It is not to be presumed that the same body of men would

pass conflicting and incongruous acts. The presumption is, that they had in mind the whole subject under consideration; that whilst the one general subject is touched in several separate acts, yet the legislative intent was that of a harmonious whole. In such case, it is the duty of the courts to so construe all the acts in such manner that each and every part thereof may stand, if such construction can be attained, without doing violence to the language used in the several acts."

We have then the rule of construction in such cases that, unless there is such a clear inconsistency in the acts that the two cannot possibly stand together, the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy. State ex rel. County of Buchanan v. Fulks et al., 296 Mo. 614.

Bearing in mind such rules of legislative construction, and in an attempt to harmonize the two acts, let us examine them to see the possible meaning intended to be applied by the Legislature. Section 3757, appearing in the Missouri Laws of 1945, supra, says that, upon receipt of the money derived from these taxes on the insurance carriers, the state treasurer shall place the whole thereof to the credit of the fund for the support of the Missouri Workmen's Compensation Division. And as the Division may from time to time determine, the state auditor and state treasurer shall make transfers to the general revenue fund from the fund for the support of the Missouri Workmen's Compensation Division, so as to refund any appropriations made to said fund out of the general revenue fund. In other words, said section is silent as to any transfer of this fund to the general revenue fund, other than as the Division may from time to time determine. Section 17 of Senate Bill No. 237, appearing in Missouri Laws of 1945, supra, says that all fees, funds and moneys from whatsoever source received by any department, board, bureau, commission, institution, official or agency of the state government by virtue of any rule or regulation shall be placed in the state treasury to the credit of the particular fund, which in our case would be the fund for the support of the Workmen's Compensation Division, and be subject to appropriation for that fund during the biennium in which collected and appropriated. Then said section says:

"\* \* \* The unexpended balance remaining in all such funds (except such unexpended balance as may remain in any fund authorized,

collected and expended by virtue of the provisions of the constitution of this state), shall at the end of the biennium and after all warrants on same have been discharged and the appropriation thereof has lapsed, be transferred and placed to the credit of the ordinary revenue fund of the state by the state treasurer. \* \* \*

Are these provisions above described so repugnant as to be impossible of harmonizing? We think not. We see nothing in Section 3757 which would indicate that its provisions are intended to apply other than during each respective biennium. At the end of such periods the unexpended balance remaining in such fund is to be governed by Section 17 and thus be transferred to the credit of the ordinary revenue fund of the state. Such a working system is quite consistent with the procedure to be followed generally in this state as regards the state revenues. The unexpended balance remaining of such funds as the one in question are, under Section 17, supra, to be transferred into the general revenue, as provided in said section, with the exception of certain specified funds. Such excepted funds must be so provided for specifically. As was stated by the court in State v. McReynolds, 193 S.W. (2d) 611, 1.c. 613, where the court was referring to certain fees in the hands of the Curators of the University of Missouri, "Such fees are expressly excepted by statute from those funds required to be placed in the State Treasury. Section 13051, R.S. 1939, Mo. R.S.A." (Section 13051 was repealed by the 63rd General Assembly, and had the same provisions as contained now in Section 17, Laws of Missouri, 1945, supra.)

#### CONCLUSION

It is, therefore, the opinion of this department that Section 3757, Missouri Laws of 1945, page 2002, can and should be harmonized with Section 17, Missouri Laws of 1945, page 1982. The provisions of Section 3757 are intended to apply during each respective biennium as regards tax money received from the insurance carriers paid annually into the revenue department to the credit of the fund for the support of the Missouri Workmen's Compensation Division. At the end of such periods the unexpended balance remaining in such fund is to be governed by Section 17 and thus be transferred to the credit of the ordinary revenue fund of the state.

Respectfully submitted,

APPROVED:

Wm. C. COCKRILL  
Assistant Attorney General

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J. E. TAYLOR  
Attorney General  
JCC:LR