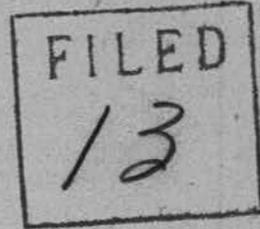


Liquor Control:  
Appropriation:  
Refund Appropriation:

Appropriation to refund cancelled beer stamps may be paid to assignee of party to whom appropriation is made.

March 14, 1949

3-16



Mr. Edmund Burke, Supervisor  
Department of Liquor Control  
Jefferson City, Missouri

Dear Sir:

Your opinion request of December 27, 1948 is as follows:

"The Legislature of the State of Missouri by Section 9.210 of House Bill No. 484 appropriated out of the State Treasury, chargeable to the General Revenue Fund, the sum of \$214.33 to purchase beer stamps to be refunded to the Capitol Brewery, Inc. to replace stamps not used and cancelled by it upon the direction and under the supervision of the Supervisor of Liquor Control for the period beginning January 7, 1948, and ending June 30, 1948. The Capitol Brewery, Inc. was declared bankrupt in the United States District Court of the Western District of Missouri at Jefferson City, Missouri, and Lester Seacat was appointed Trustee. The Trustee in Bankruptcy, assigned the above referred to claim for refund to the Capitol Products Company. The Capitol Products Company now claims that it is entitled to the stamps.

"Will you please advise me if we can procure the stamps from the Director of Revenue for the Capitol Brewery, Inc. and then turn these stamps over to the Capitol Products Company upon the strength of the assignment herein referred to.

"Copies of the Assignment and the Order of the Referee in Bankruptcy are hereto attached."

Section 9.210, Laws 1947, Vol. 2, page 163 is as follows:

"There is hereby appropriated out of the State Treasury, chargeable to the General Revenue Fund, the sum of ..... (\$125,842.11), or so much thereof as may be necessary to purchase liquor and beer stamps to be refunded to the following named persons or companies to replace stamps not used and cancelled, upon the direction and under the supervision of the Supervisor of Liquor Control, for the period begin-

ning January 7, 1948 and ending June 30, 1948 . . .		
Capitol Brewery, Inc.,		
Jefferson City, Missouri	190.84	
	23.49	214.33"

It is well to state at the outset that no particular provision of law exists under which there is statutory directions for the destruction of liquor and beer stamps under the supervision of the Supervisor, so as to lay the basis for making application for refund by way of relief appropriations, as was done here. However, in 59 C. J. Section 436 page 285 it is said

"In the absence of a constitutional prohibition, the legislature may take on itself the adjustment and settlement of claims . . ."

State v. Draper 44 Mo. 245 appears to adopt this rule in Missouri, because there the court directed a claim to be paid by the auditor in the following language:

"The Legislature audited and settled the claim, and fixed the exact sum to be paid. The auditor has no discretion in the premises. The Act (of the Legislature) is conclusive of the indebtedness and its amount. The auditor has nothing to do with its propriety or justice . . ."

Our examination of the Constitution discloses no prohibition against the General Assembly's auditing and settling a claim for refund of taxes.

There is, however, another question to be considered in connection with the opinion. It arises from the fact that it is the Capitol Products Company which seeks this refund as assignee of the Capitol Brewery, Incorporated. The question is whether such a claim is assignable.

State v. Draper, supra, affords authority to conclude that such claim is a chose in action, enforceable by writ of mandamus. Mandamus is an action at law. State ex rel Horton v. Bourke, Mo. Sup. 129 SW 2nd 866, 868. In Bullock v. E. B. Gee Land Co. Mo. Sup. 148 SW 2nd, 565, 570 the rule is stated:

"One may purchase a cause of action at law and enforce all legal rights which go with it, but the right to appeal to the conscience of a court of equity cannot be bought or sold."

It naturally follows from the above that a chose in action being capable of being sold is capable of being assigned.

The assignment attached to your opinion request, and court order supporting the same, appear to be sufficient in form to transfer title to the chose in action in question.

In passing upon this request we feel that we should mention one outstanding fact which prevents the payment of this appropriation at this time. Said appropriation was made for the period beginning January 7, 1948 and ending June 30, 1948. Under Section 28, Article IV, Constitution of Missouri 1945, it provides that no appropriation shall confer authority to incur an obligation after the termination of the fiscal period to which it relates and further that every appropriation shall expire within six months after the end of the period for which it was made. Since this appropriation ended on June 30, 1948, under Section 28, Article IV, supra, after December 31, 1948, none of the funds so appropriated could be expended.

#### CONCLUSION

It is therefore our opinion that the Department of Liquor Control could honor the claim of the Capitol Brewery, Inc., as assigned to the Capitol Products Company, and turn over to the latter concern as assignee, stamps to the extent authorized by the General Assembly, if it were not for the fact said appropriation expired on December 31, 1948 by virtue of Section 28, Article IV, Constitution of Missouri 1945, which provides that every appropriation shall expire within six months after the end of the period for which it is made.

Respectfully submitted,

LAWRENCE L. BRADLEY  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
ATTORNEY GENERAL

LLB:FG