

WORKMEN'S COMPENSATION:

DUTIES OF STATE TREASURER:

The duties of the State Treasurer defined in Section 3707(a), Laws of Missouri, 1945, page 1998, amending the Workmen's Compensation Act, are related to the receipt, custody and disbursement of State funds. Said Section 3707(a) is constitutional.

April 23, 1950

5/1/50

FILED
64

Honorable M. W. Morris
State Treasurer
Custodian of the Second Injury Fund
Jefferson City, Missouri

Dear Mr. Morris:

This is in response to your recent letter requesting further clarification of the opinion of this Department dated November 21, 1949, respecting the duties of the State Treasurer as custodian of the Second Injury Fund under the Workmen's Compensation Act, in view of the last sentence of Section 15, Article IV of the Constitution of this State, 1945, which sentence states the following:

"No duty shall be imposed on the state treasurer by law which is not related to the receipt, custody and disbursement of state funds."

Your letter requesting our further opinion on the subject states:

"With further reference to your opinion, dated November 21, 1949, in connection with the duties of the State Treasurer as custodian of the Second Injury Fund under the Workmen's Compensation Act, it would appear that this fund must be segregated from the moneys of the State Treasury in order that such moneys may be disbursed by the State Treasurer in the absence of warrants from the Comptroller and Auditor.

"The opinion holds that this fund is not state money. The question arises in my mind whether or not it is proper for the

Honorable M. E. Morris

State Treasurer to have any connection with it. This is in view of the last part of Section 15, Article 4 of the Constitution of Missouri, 1945, which reads:

"No duty shall be imposed on the State Treasurer by law which is not related to the receipt, custody and disbursement of state funds."

The complete text of Section 15 states:

"All revenue collected and moneys received by the state from any source whatsoever shall go promptly into the state treasury, and all interest, income and returns therefrom shall belong to the state. Immediately on receipt thereof the state treasurer shall deposit all moneys in the state treasury to the credit of the state in banking institutions selected by him and approved by the governor and state auditor, and he shall hold them for the benefit of the respective funds to which they belong and disburse them as provided by law. Such institutions shall give security satisfactory to the governor, state auditor and state treasurer for the safekeeping and payment of the deposits on demand of the state treasurer authorized by warrants of the state auditor. No duty shall be imposed on the state treasurer by law which is not related to the receipt, custody and disbursement of state funds."

Your question is whether, in view of the language of the last sentence of said Section 15, that part of said Section 3707(a) enacted in 1943, (Laws of Missouri, 1943, page 1068, as amended, Laws of Missouri, 1945, page 1998), designating the State Treasurer custodian of the Second Injury Fund and prescribing his duties thereunder has become inoperative as being in conflict with Section 15, Article IV of the 1945 Constitution, particularly the last sentence of the section.

The Legislature has the power to fix, change, increase or diminish the duties of any public officer unless

Honorable M. B. Morris

prohibited from so doing by constitutional provision. Regarding such power 46 C.J. 1036, states the following text:

"* * * An officer accepting office does so subject to the possibility that his duties may be increased or diminished, and in the absence of constitutional restrictions the legislature may do so at its pleasure. Thus the Legislature may, from time to time, change the duties of offices created by itself. The legislature, moreover, may, within reasonable limits, increase or abridge the duties of a constitutional office, but they cannot be so changed as to destroy the powers of the office or essentially to alter it."

The Second Injury Fund itself, as said in our opinion of November 21, 1949, is a special fund. Notwithstanding, however, that the fund is a special fund, the duties of the State Treasurer as custodian of the fund are, we believe, not only "related to the receipt, custody and disbursement of state funds," but were and are necessary elements in the receipt, custody and disbursement of public funds appropriated and used from the beginning for the creation and administration of the entire Workmen's Compensation Act. The word "related" is defined in Webster's New International Dictionary, Second Edition, page 2102, in definition 2 as "having relationship, as to or with something expressed or implied or with each other; connected by reason of an established or discoverable relation; as, a closely related subject; * * * ."

Beginning in 1927 with the first session of the Legislature after the adoption of the Act under the initiative, (Laws of Missouri, 1927, pages 25, 35 and 54) down to and including the Session of the 63rd General Assembly in 1945, (Laws of Missouri, 1945, pages 212, 329 and 330), and including also the 64th General Assembly (Laws of Missouri, 1947, page 76, Section 4.280) the Legislature at each session thereof has appropriated from the General Revenue Fund state funds for salaries, supplies, equipment and maintenance of the Workmen's Compensation Commission and the administration of the Act itself, including the carrying out of the terms of said Section 3707(a) which created the Second Injury Fund and

Honorable M. E. Morris

named the State Treasurer custodian of the fund and defined his duties as such custodian.

At the Session of 1927 the Legislature loaned out of the General Revenue Fund to the Workmen's Compensation Commission the sum of Twenty-Five Thousand (\$25,000.00) Dollars, (Section 23a, page 35), in addition to the other appropriations on pages 25 and 54 of said Session Acts (Laws of Missouri, 1927, pages 25, 35 and 54).

One of the appropriations made by the Legislature in 1945 (Section 36a, Laws of Missouri, 1945, page 330) was for the sum of Twenty-Five Thousand (\$25,000.00) Dollars for the benefit of the Second Injury Fund.

The appropriations of state funds noted were for the actual operation of the Workmen's Compensation Act, both as to the general and effective enforcement of the Act and on behalf of the later amendment--Section 3707--creating the Second Injury Fund, and the provisions for its custody by the State Treasurer and its use in the payment of compensation under the Act.

These public funds were used and disbursed for the payment of salaries of the officers designated by law to carry out the terms of the Act, and for equipment, such as printing and office furnishings, and such other uses as the Commission would find necessary in its work, and for the payment of salaries and wages to employees of the Commission for the performance of their duties, including the putting into active operation the Second Injury Fund amendment as a part of the Act. Such appropriations of state funds and their use in behalf of the administration of the Workmen's Compensation Act make workmen's compensation, including the operation of the Second Injury Fund amendment, the collection of the money required to be paid into the fund, the payment of compensation out of the fund and the duties of the State Treasurer as custodian of the fund as defined in said Section 3707(a) are kindred subjects with and all of them are connected with and are thusly "related to the receipt, custody and disbursement of state funds."

The provisions of Section 3693 of the Compensation Act authorize the public bodies such as the state, counties, municipal corporations, townships and school districts named in the first paragraph of said Section 3693 to elect,

Honorable M. E. Morris

under the fifth paragraph of said section, to bring themselves within the provisions of the Workmen's Compensation Chapter. Upon the acceptance of the Act such public entities are authorized to use public funds for the payment of compensation to their employees who may be injured in the performance of duties beneficial to the public. By such acceptance of the provisions of Chapter 29, and particularly under the provisions of said Section 3707(a), every such public body, as an employer, must pay into the Second Injury Fund for every fatal injury by accident to an employee, on account of which death benefits would be payable under Chapter 29, but sustained by an employee having no dependents, as defined by Section 3709, R.S. Mo. 1939, a lump sum of Five Hundred (\$500.00) Dollars, in addition to the amount provided for burial and the expenses of the employee's last illness. Such employer shall pay into the Second Injury Fund in case of the total, permanent loss of the use of an eye, a foot, a leg, an arm or a hand, in addition to the compensation as provided for in the Act, the sum of One Hundred (\$100.00) Dollars for the total, permanent loss of the use of any such member. Such payments would, of course, be made with and out of public funds. These provisions not only create a relationship between the Second Injury Fund and public funds, or state funds, as named in said Section 15 of Article IV of the Constitution, but therein and thereby by mandatory, statutory directions in Section 3707(a) such employers are compelled to participate actively in paying contributions to and for the maintenance of the Second Injury Fund out of public or state funds.

The present Constitution itself, in Section 30 of Article IV authorizes the State Highway Department to set apart from its funds and income a sufficient sum thereof to pay for any workmen's compensation. Said Section 30 of Article IV of the new Constitution was not self-enforcing. The authority granted in said Section for the Highway Commission to set apart and use its funds for compensation purposes required legislative action to make such provisions operative. The Legislature has provided a plan for the Highway Department to follow in carrying out the authority given it by said Section 30 to set aside from its funds a necessary amount to pay for compensation, by enacting Senate Committee Substitute for House Bill No. 50, Laws of Missouri, 1945, pages 2004 and 2005, which is an Act to amend Article 13 of Chapter 46, R.S. Mo. 1939. This article and chapter constitute the Highway Department and State Highway System Laws of Missouri. The amendment

Honorable M. W. Morris

added to said article and chapter two new sections to be known as Sections 8752a and 8752b, authorizing the State Highway Commission to accept the provisions of the Workmen's Compensation Act--Chapter 29, R.S. Mo. 1939--and to pay compensation on account of injury or death to its employees primarily engaged in highway maintenance and construction work, and for uniformed members of the State Highway Patrol. Said Section 8752a provides that the amending Act is designed to extend the provisions of the Workmen's Compensation Act, Chapter 29, R.S. Mo. 1939, and amendments thereto, to include the employees of the State Highway Commission and the employees of the State Highway Patrol. The Highway Department would be, by the authority given to it by said Section 30 and under the terms of said 1945 enabling Act, required to use state funds to pay compensation and would be under the same obligation and mandatory duty to pay such sums into the Second Injury Fund by the terms of said Section 3707a out of state or public funds upon the happening of such casualties as are therein described, as are likewise required of other public bodies electing to accept the provisions of the Compensation Act under said Section 3693.

The Supreme Court of this State in the case of State ex rel. McKinley vs. Hackmann, 282 S.W. 1007, a case in which State Highway funds were involved, defined state revenue, or, as the last sentence in said Section 15, Article IV of the present Constitution states it, "state funds". The Court in the Hackmann case, l.c. 1011, quoted from the Northeast Missouri Teachers' College case, 264 S.W., l.c. 700, and in adopting its definition of state revenue, holding that money out of which the Highway Commission is to be maintained is as much public or state revenue as any money coming into the State Treasury from any source said:

"By revenue, whether its meaning be measured by the general or the legal lexicographer, is meant the current income of the state from whatsoever source derived which is subject to appropriation for public uses. This current income may be derived from various sources, as our numerous statutes attest, but, no matter from what source derived, if required to be paid into the treasury, it becomes revenue or state money."

"It thus appears that not only is the fund public revenue or state money, but it is public

Honorable W.E. Morris

revenue of a very extraordinary kind, levied, collected, and held by the state for two specific public uses, the major use of which is the payment and retirement of state bonds. * * * ."

The escheat fund of this State, in its creation and administration, and the duties of the State Treasurer respecting that fund, are very similar in many respects to the State Treasurer's duties as custodian of the Second Injury Fund.

The framers of the Constitution and people voting upon the draft knew that the Second Injury Fund statute, 3707a, enacted in 1943, (Laws of Missouri, 1943, page 1068 as amended, Laws of Missouri, 1945, page 1998), and the escheat statutes were in full force and effect when Section 15 was included in the draft of the Constitution and was adopted. It is not to be presumed that the framers of the document, or the people intended to nullify or, by implication, provide for the repeal of either the Second Injury Fund amendment to the Compensation Act or any of the escheat statutes contained in said Article 3. It is plain, we believe, that it was the intention of the framers that the duties of the State Treasurer as Custodian of the Second Injury Fund should not be prohibited by the terms of said last sentence in said Section 15 of Article IV, because such duties were then and now are necessarily and immediately connected with and "related to the receipt, custody and disbursement of state funds."

CONCLUSION.

It is, therefore, the opinion of this Department in consideration of the above related conditions, facts and authorities, that the duties of the State Treasurer as Custodian of the Second Injury Fund of the Workmen's Compensation Act of this State, Laws of Missouri, 1945, page 1998, are related to the receipt, custody and disbursement of state funds of this State, and are not prohibited by the last sentence of Section 15 of Article IV of the Constitution of Missouri, which reads: "No duty shall be imposed on the state treasurer by law which is not related to the receipt, custody and disbursement of state funds."

Respectfully submitted,

APPROVED:

J. W. FAYLOR
Attorney General

GEORGE W. CROWLEY
Assistant Attorney General

GEC:ir