

CIVIL DEFENSE: Civil defense monies received from Federal government and political subdivisions not state monies so as to be placed in state treasury and appropriated.

February 14, 1952



Honorable Ralph W. Hammond
Office of Civil Defense
Jefferson City, Missouri

Dear Sir:

This department is in receipt of your request for an official opinion upon the following questions:

"1. Will funds contributed to the civil defense program for matching purposes by the Federal government and by political sub-divisions of this state be considered state funds under the purview of Article III, Section 36 of the Missouri Constitution?

"2. Under the provisions of Section 26.200 Missouri Civil Defense Act (Senate Committee Substitute for Senate Bill #66, Sixty-sixth General Assembly) is the Governor empowered to receive and disburse such funds for the participation of such political sub-divisions in the Federal grant-in-aid program? Specifically, can he receive and transmit funds both from the Federal government and from the political sub-divisions, municipal corporations and their instrumentalities of the State of Missouri?"

At the outset, it is necessary to point out the procedure laid down by the Federal Civil Defense Act of 1950 (64 Stat. 1245, 50 U.S.C.A. App. 2251, 2297), and the Missouri Civil Defense Act (S.C.S.S.B. 66, 66th General Assembly, V.A.M.S., Sections 26.140 to 26.270), in relation to contributions and matching of funds by the Federal government and political sub-divisions of the state. Section 2281(1) of the Federal act provides that the Federal Civil Defense Administrator is

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authorized to "make financial contributions * * * to the States for civil defense purposes." The section further provides that "the amounts authorized to be contributed by the Administrator to each State * * * shall be equally matched by such State from any source it determines is consistent with its laws." Section 26.210 of the Missouri act provides that political subdivisions of this state may "appropriate and expend funds * * * for civil defense purposes." The section further provides that subdivisions may "direct and coordinate the development of civil defense plans and programs in accordance with the policies and plans of the federal and state civil defense agencies."

Section 26.200, RSMo 1949, provides as follows:

"Whenever the federal government or officer or agency thereof shall offer to the state, or through the state to any political subdivision thereof, services, equipment, supplies, materials or funds by way of gift, grant or loan, for the purpose of civil defense, the state acting through the governor, or the political subdivision, acting with the consent of the governor and through its executive officer, may accept such offer and upon acceptance the governor or executive officer of the political subdivision may authorize any officer of the state or of the political subdivision, as the case may be, to receive such services, equipment, supplies, materials or funds on behalf of the state or the political subdivision subject to the terms of the offer."

Section 36 of Article III of the Constitution of Missouri, 1945, provides, in part, as follows:

"All revenue collected and money received by the state shall go into the treasury and the general assembly shall have no power to divert the same or to permit the withdrawal of money from the treasury, except in pursuance of appropriations made by law. * * *"

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There is another section of the Constitution which deals with state funds, the same being Section 15 of Article IV, which reads as follows:

"The state treasurer shall be custodian of all state funds. 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. * * *"

The question as presented by your request is whether monies received by the state from the Federal government for civil defense purposes, which monies are contributions from the Federal government to political subdivisions of this state, are state funds so that they must go into the state treasury and be appropriated out by law. There is the additional question of whether monies contributed by the political subdivisions to the Federal government, through the state, are state funds within the meaning of the two constitutional provisions quoted above. In this connection we wish to point out that this department, in an opinion to Honorable Carl J. Henry, Chairman of the Unemployment Compensation Commission, dated July 2, 1946, held that monies paid by employers under the State Unemployment Insurance law, which were collected and placed in a separate fund and paid directly over to the United States Treasury, were not state funds within the meaning of the Constitution and did not have to be appropriated by law.

This department has further held, in an opinion to Mrs. George A. Rozier, President of the Library Advisory Board, dated February 9, 1949, that money received from the Carnegie Corporation of New York by the Missouri State Library for the purchase of films was received by the State Library as trustees, and that such money did not become state monies within the meaning of Section 36 of Article III of the Constitution of Missouri, 1945.

Our courts have had occasion to interpret these provisions and to determine what constitutes state funds and what does not constitute state funds within the meaning of the Constitution. In the early case of State ex rel. Stevenson v. Stephens, 136 Mo. 537, 37 S.W. 506, the court had before it the status of securities deposited with the State Treasurer by a bond investment company for the protection of the investors in the bonds of the company. At Mo. l.c. 546 the court said:

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"It is next insisted that though respondent may hold the money as treasurer, and for the purpose of making the security good, still he can only be required to pay it out in the manner and under the restrictions of the constitution and laws of the state."

The court then quoted the two constitutional provisions, and continued:

"It is manifest that these provisions only apply to money 'belonging to the state.' The money in question, though it was deposited with the treasurer, was for the specific purpose of making good the security intended for the protection of those dealing with bond investment companies, and was not money belonging to the state within the meaning of the constitution. The securities, whether in money, bonds, or notes, are held by the treasurer in trust, not for the use or benefit of the state, but for the protection of those who may hold the bonds, certificates or debentures of bond investment companies which are authorized to sell such securities on the partial payment or installment plan."

In conclusion it was said:

" * * * It is clear that the legislature did not intend that the money or securities deposited should be paid out or returned under the regulation required in paying out the public money. We are of the opinion, therefore, that respondent had the implied power, under the act, to make the agreement and that an appropriation or warrant of the auditor was not necessary."

In the case of State ex rel. Thompson v. Board of Regents, 305 Mo. 57, 264 S.W. 698, it appears that the Board of Regents of the Northeast Missouri State Teachers College had purchased insurance policies upon buildings belonging to the college and had paid for said policies out of funds not appropriated by the Legislature for the support of said college. A loss had occurred under said policies, and the Board of Regents had collected

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damages from the insurance company, and the State Treasurer was seeking to compel the Board of Regents to pay the proceeds of said policies into the state treasury. The court 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; its classification as such being dependent upon specific legislative enactment, or, as aptly put by the respondent, state money means money the state, in its sovereign capacity, is authorized to receive, the source of its authority being the Legislature. * * *"

With the above rules in mind, it will be seen that, under Section 26.200, RSMo 1949, when the Federal government shall offer "through the state to any political subdivision thereof, services, equipment, supplies, materials or funds by way of gift, grant or loan, for the purpose of civil defense," then the state, acting through the Governor, may accept such offer and the Governor may authorize any officer of the political subdivision to receive such contribution. We believe it is apparent it was not intended by the Legislature that these contributions to the political subdivisions should be state funds, but the Governor is only the intermediary through whom the funds are directed and sent. The same is true upon funds received from the political subdivisions, which funds are to be transmitted to the Federal government for the purpose of matching federal funds and the whole to be used for civil defense purposes.

This opinion has been written upon the assumption that the funds received from the Federal government for use by the political subdivisions are as stated in Section 26.200, supra, offered "through the state to any political subdivision." If, however, the Federal government, under the provisions of Section 2281(1) of the Federal Civil Defense Act of 1950, makes the financial contributions to the state absolute and title is

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intended to be in the state and not in the political subdivision, then it would appear that such monies are state funds and must go into the state treasury to be appropriated out by law.

CONCLUSION

It is therefore the opinion of this department that funds contributed to the civil defense program for matching purposes by the Federal government and political subdivisions of this state are not necessarily state funds within the meaning of Section 36, Article III, and Section 15, Article IV, Constitution of Missouri, and that such funds do not have to go into the state treasury and do not have to be appropriated out by law.

Respectfully submitted,

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APPROVED:

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