

DEPARTMENT OF REVENUE: Appropriations from general revenue may be used
APPROPRIATIONS: to pay expenses of cigarette tax collection.



October 17, 1955

Honorable M. E. Morris
Director of Revenue
Jefferson Building
Jefferson City, Missouri

Dear Mr. Morris:

I have received your request for an opinion of this office, which request reads as follows:

"Senate Bill 351, which was submitted to and approved by the qualified voters of the State of Missouri provides for a two-cent per package tax on cigarettes, effective January 1st.

"The Act provides that the Division of Collection of the Department of Revenue collect the tax and describes the method. Of course, to furnish stamps, as provided, and police the operation will entail a large expenditure. The funds derived are all to be deposited in the State Treasury to the credit of the State School Moneys Fund.

"There is no specific appropriation for our use in the collection of this tax. Section 3.070 of House Bill 3 provides an appropriation for the general expenses and the collection of various taxes described '.....and all other taxes....', et cetera. This appropriation is from the General Revenue Fund. Would it be entirely proper to use money appropriated in this section for the purpose of collecting the Cigarette Tax, which is allocated by law to a specific fund in the Treasury?

"Due to the fact that we have only a short time to perfect our procedure, purchase stamps, etc., an early reply will be appreciated."

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As you have stated in your opinion request, Senate Bill No. 351 does impose upon the Division of Collection of the Department of Revenue the duty of collecting the cigarette tax provided for under that bill. Section 10 of the bill provides that all taxes collected thereunder shall be deposited in the state treasury to the credit of the State School Moneys Fund.

We find no appropriation for the Department of Revenue for the express purpose of collecting the cigarette tax. As pointed out in your opinion request, Section 3.070 of House Bill No. 3 of the 68th General Assembly does appropriate money for the use of the Director of Revenue for the collection of certain specified taxes "and all other taxes * * *." This appropriation is from the general revenue fund.

Section 22 of Article IV of the Constitution of Missouri 1945 establishes the Department of Revenue. That section further provides: "The division of collection shall collect all taxes, licenses and fees payable to the state * * *." Similar provision is made by Section 136.010 RSMo 1949.

"The power to appropriate the money of the state is legislative power, and the legislature is supreme in matters relating to appropriation as to which no constitutional restrictions exist." 81 C.J.S., States, Sec. 161, p. 1203. Under the Constitution and statute, the collection of this tax is the duty of the Division of Collection of the Department of Revenue. We find no constitutional restriction which would prevent the General Assembly from paying the expense of the Division of Collection with regard to such taxes from the general revenue fund of the state, even though the proceeds of the tax go to the credit of a special fund.

As above pointed out, in the absence of constitutional limitation, the Legislature is the supreme authority in such regard. The Legislature, having appropriated funds from general revenue for the use of the Department of Revenue in collecting all taxes, we are of the opinion that such funds may be employed to pay the expense of the collection of the State Cigarette Tax.

CONCLUSION.

Therefore, it is the opinion of this office that funds appropriated to the Department of Revenue from the general revenue fund may be used by the Division of Collection in carrying out the duties

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imposed upon it by Senate Bill No. 351 of the 68th General Assembly in collecting the cigarette tax imposed under said bill.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Robert R. Welborn.

Yours very truly,

John M. Dalton
Attorney General

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