

APPROPRIATION:
CONSTITUTION:
GENERAL ASSEMBLY:
LEGISLATURE:
LIQUOR:

Monies collected under House Bill No. 292, 73rd General Assembly, enacted as Section 311.328 (5), V.A.M.S. ^{August} September 1965 Pamphlet, should be paid into the treasury as general revenue. It is our further opinion that Section 4.645, Conference Committee Substitute for House Bill No. 4, 73rd General Assembly, is not unconstitutional.

OPINION NO. 368

December 2, 1965

Mr. Eugene P. Walsh
Legal Assistant to Governor
Executive Office
Jefferson City, Missouri



Dear Mr. Walsh:

This is in answer to your request for an opinion concerning two statutes enacted by the 73rd General Assembly.

^{August.} Your first question concerns House Bill No. 292, 73rd General Assembly, enacted as Section 311.328, V.A.M.S. September 1965 Pamphlet. House Bill No. 292 provides for identification cards to be issued by the Department of Liquor Control to any person proving to be over twenty-one years of age. The identification cards are to aid liquor licensees in determining the age of purchasers. Specifically you ask if subsection 5 authorizes expenditures by the Liquor Department of the monies collected under House Bill No. 292. Subsection 5 reads as follows:

"The fees collected under authority of this section shall be used to cover the costs of administration, and any surplus over and above the costs of administration shall be put into a general fund of the department of liquor control to be used in the enforcement of the nonintoxicating beer law and intoxicating liquor law of the State of Missouri."

Article III, Section 36, Constitution of Missouri, reads as follows:

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"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. All appropriations of money by successive general assemblies shall be made in the following order:

First: For payment of sinking fund and interest on outstanding obligations of the state.

Second: For the purpose of public education.

Third: For the payment of the cost of assessing and collecting the revenue.

Fourth: For the payment of the civil lists.

Fifth: For the support of eleemosynary and other state institutions.

Sixth: For public health and public welfare.

Seventh: for all other state purposes.

Eighth: for the expense of the general assembly."

Article IV, Section 28, Constitution of Missouri, reads as follows:

"No money shall be withdrawn from the state treasury except by warrant drawn in accordance with an appropriation made by law, nor shall any obligation for the payment of money be incurred unless the

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comptroller certifies it for payment and certifies that the expenditure is within the purpose of the appropriation and that there is in the appropriation an unencumbered balance sufficient to pay it. At the time of issuance each such certification shall be entered on the general accounting books as an encumbrance on the appropriation. No appropriation shall confer authority to incur an obligation after the termination of the fiscal period to which it relates, and every appropriation shall expire six months after the end of the period for which made."

It is our opinion that subsection 5 would be invalid if it is construed as providing that the Liquor Department may spend directly the money it collects. However, statutes are presumed to be constitutional and when one construction of a statute will make it constitutional it will be so construed. *Milgram Food Stores, Inc. v. Ketchum, Mo.*, 384 S.W.2d 510. Therefore, all money collected under this act shall be paid into the treasury to be appropriated by the general assembly.

It has been held that the legislature can enact a statute which provides that monies collected pursuant to the statute can be put in a special fund in the state treasury as long as it is still subject to proper appropriation. *State ex rel. Fath v. Henderson*, 160 Mo. 190, 60 S.W. 1093 (1901); *State ex rel. Kessler v. Hackmann*, 304 Mo. 453, 264 S.W. 366 (1924). The court in the *Fath* case, *supra*, said this, *l.c.* S.W. 1096:

"It does not follow, because the legislature is required to pursue a specific order in passing appropriation bills, that it may not provide a tax for a public purpose, and require it to be paid into the treasury and set apart in a special fund, subject to a subsequent appropriation for the purpose for which it was levied, or, for that matter, to some other

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public purpose, when unrestrained by a constitutional limitation."

In the Fath case, supra, the court was considering the following statutory provision, l.c. S.W. 1094:

"Sec. 5. The moneys received by the state treasurer under the provisions of this act which shall exceed in any one year the amount required by section four of this act to be deposited to the credit of the 'State Seminary Moneys,' shall be deposited in the state treasury to the credit of a fund to be known as the 'Educational Funds,' which is hereby created and established. The moneys deposited in the said fund shall be appropriated by the general assembly for public educational purposes."

And, in the Kessler case, supra, the court was considering a statute with the following language, l.c. S.W. 367:

" * * * Provided, however, that all moneys collected by the board or its treasurer shall be paid into the state treasury, there to constitute a fund for the purpose of carrying out the provisions of this act * * *."

In both the above quoted statutes the legislature specifically created special funds. In subsection 5 of House Bill No. 292 no such specific language was used. It is our opinion that the legislature merely indicated a general intention that the monies collected be expended for certain purposes. Therefore the money should be put into the treasury as general revenue.

Your second question concerns the constitutionality of Section 4.645, Conference Committee Substitute for House Bill No. 4, 73rd General Assembly. House Bill No. 4 is an appropriation act:

"To appropriate money to pay the salaries, wages and per diem and

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other expenses of the civil of-
ficers and employees of the state,
* * *

Section 4.645 reads as follows:

"TO THE DIVISION OF GEOLOGICAL SURVEY AND WATER RESOURCES

"All moneys received from the
federal government, or any agency
thereof, or from any other source,
deposited in the State Treasury for
the use of the Division of Geological
Survey and Water Resources."

Section 4.645 itself states that the money that is appro-
priated is from funds deposited in the state treasury.
Therefore, the section is not in conflict with Article III,
Section 36, or Article IV, Section 28, Missouri Constitution.

CONCLUSION

It is the opinion of this office that the monies collected
under House Bill No. 292, 73rd General Assembly, enacted as
Section 311.328 (5), V.A.M.S. September 1965 Pamphlet, would
be paid into the treasury as general revenue. It is our
further opinion that Section 4.645, Conference Committee
Substitute for House Bill No. 4, 73rd General Assembly, is not
unconstitutional.

The foregoing opinion, which I hereby approve, was
prepared by my Assistant, Walter W. Nowotny, Jr.

Yours very truly,


Norman H. Anderson
Attorney General