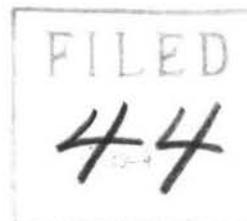


April 20, 1967



Mr. Robert L. Hyder
Chief Counsel
Missouri State Highway Commission
Jefferson City, Missouri

Dear Mr. Hyder:

This letter responds to your inquiries that you submitted in the form of three separate questions we are setting out below:

"1. It appears that the present practice in making withdrawals from the State Road Fund involves in at least some instances a charge to the State Road Fund, a corresponding credit to the General Revenue Fund, and the issuance of a Treasurer's draft against the latter rather than directly from the State Road Fund. Should not withdrawals be made directly against the State Road Fund?

"2. It appears to be the present practice to charge the State Highway Commission with balances which exist in the State Highway Department Fund. We believe that the State Highway Commission may consider as its assets only that appropriation from the State Highway Department Fund which may be made to it for the six purposes set forth in Section 30(b) of Article IV of the Missouri Constitution and that such appropriations (for the purpose of discussion, they amount to some seven or eight million dollars per year,) together with the 'State Road Fund,' constitute the 'assets' which the Commission may consider in programming and for other lawful expenditures.

"3. Should not the State Highway Commission, Auditor, and Treasurer comply with Section 226.230 RSMo., 1959, and make transfers from the State Highway Department Fund to the State Road Fund?"

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The genesis of this problem seems to lie (under the first question) against the current accounting procedures and in the second question, in the preparation of certain fiscal reports prepared by the State as they are applied to the Highway Commission.

In the first question, the accounting procedures, among others, to which the Highway Commission takes exception arises as one example, from the method of paying bills of the Commission by check (issued upon a warrant) and drawn by the State Treasurer makes a charge against the State Road Fund a corresponding credit in the same amount to the General Revenue Fund. Then a check is drawn by the State Treasurer against the General Revenue Fund. To illustrate the problem further, it sometimes happens that a check is lost. The money is then retained in the General Revenue Fund until the statute (Section 30.200 RSMo., 1959) runs. Then upon request of the Highway Commission, a new check is issued by the State Treasurer for the same bill but chargeable against the General Revenue Fund. Obviously, this is simply an accounting procedure and it is to these procedures, as an example, that the Highway Commission takes exception.

As we understand your first question, we find it is addressed to the propriety of an accounting system that has existed for an extended period (according to your letter) and is currently being used by the several state agencies. The accounting procedures of this state and its several agencies are the responsibility of the state auditor pursuant to Section 13, Article IV of the Missouri Constitution and Section 29.180 RSMo., 1959, which implements the Constitutional provisions. In effect, this Section directs the state auditor, in cooperation with the budget director, to establish appropriate systems of accounting. These systems that he has provided for or changes that he may make to the system are valid so long as there is no diversion of funds from one appropriated purpose to another without the sanction of law. We are of the opinion that the administrative handling and accounting procedures of which you complain are enunciated by the state auditor (in conjunction with the budget director) and rests in the sound discretion of these officers so designated by the Constitution and statutes. We conclude therefore that you should address your application for relief in this area to the state auditor and the budget director. In essence, this is not a legal problem and we can not help you in this area.

Your second question has as its main thrust the propriety of certain entries shown on state fiscal reports that allegedly indicate balances chargeable to the State Highway Commission when in fact these balances do not reflect the true financial

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situation. We do, of course, condemn an accounting report that is false. You complain that the State Highway Commission is charged with balances that exist in the State Highway Department Fund which, in fact, do not belong to them. This leads others to believe that the State Highway Commission has an inordinately large amount at its disposal whereas in truth and in fact, the State Highway Department Fund (account 705) is used to pay funds to other departments and not solely the State Highway Commission. The State Highway Department Fund (so denominated by Section 226.200 RSMo., 1959) has as its source of revenue those monies provided by Section 30(a) of Article IV, Missouri Constitution. This Section provides that "from such fund shall be paid or credited with costs:

- '(1) Of collection of all said state revenue derived from highway users as an incident to their use or right to use the highways of the state;
- '(2) Of maintaining the state highway commission;
- '(3) Of maintaining the state highway department;
- '(4) Of any workmen's compensation for state highway department employees;
- '(5) Of the share of the highway department in any retirement program for state employees, only as may be provided by law; and
- '(6) Of administering and enforcing any state motor vehicle laws or traffic regulations.'

It is true other departments do share in the proceeds as, for example, the Department of Revenue recently received \$650,000 as cost of collection of subsection (1), supra and the State Highway Patrol received some \$10,000,000, for its operating costs (in part) under sub-paragraph (6) above. You received substantial sums by way of transfer to State Road Funds (account 710) from this account (No. 705), during this fiscal year as for example:

- (a) On November 4, 1966, a transfer of \$20,000,000 from the State Department Fund to the State Road Fund;

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(b) September 21, 1966, a transfer of \$20,000,000 from the State Highway Department Fund to the State Road Fund;

(c) September 7, 1966, a transfer of \$10,000,000 from the Highway Department Fund to the State Road Fund;

(d) July 22, 1966, a transfer of \$10,000,000 from the State Highway Department Fund to the State Road Fund; and

(e) July 23, 1966, a transfer of \$10,000,000 from the State Highway Fund to the State Road Fund.

These above funds are devoted to construction of highways and are known as "State Road Funds" (Account No. 710.)

You also received about \$8,000,000 which set aside in the State Highway Fund for the cost of maintaining the State Highway Commission, the State Highway Department and any Workmen's Compensation for State Highway Department employees. It, thus, appears that you do benefit substantially from the State Highway Department Fund. We do agree that the title of the fund (State Highway Department Fund) as designated by statute (Section 226.200 RSMo., 1959) may not be precisely accurate in its connotations to the average person but any change in title would require legislative action.

We agree that the State Highway Commission may consider, as its operating assets, that sum which is set aside from the State Highway Department Fund to it for the purposes set out in Section 226.200 RSMo., 1959, and that such sum together with the State Road Fund constitute the assets which the Commission may consider in programming and for other lawful expenditures of the Commission.

We suggest your remedy is purely a fiscal matter within the competence of the State Auditor in that he can change, in his discretion, the fiscal reports to show that the State Highway Commission has as its assets only those monies from the State Highway Department Funds allocated to the Department for operating costs pursuant to Section 226.200 RSMo., 1959, and those transfers to the State Road Fund for the purposes set forth in Section 30(b), Article IV, Missouri Constitution, which is the "State Road Fund" that we have adverted to above. Again, this is not a legal problem.

In response to your third question, Section 226.230 RSMo., 1959, reads as follows:

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"The auditor and treasurer and the state highway commission are directed to use their judgment in anticipation of collections coming into these funds and to make transfers when same shall be deemed advisable by them."

This section imposes a mandate on the named officers and the Commission and directs their conduct with respect to these funds. We see no ambiguity. This Section compels the several officers and the Commission to use their collective judgment on the anticipated incomes coming into these funds and to make such transfers from the State Highway Department Fund to the State Road Fund in their collective discretion when such transfers shall be deemed advisable by them. The Section is mandatory and requires the exercise of a collective effort to arrive at a collective decision.

Yours very truly,

NORMAN H. ANDERSON
Attorney General