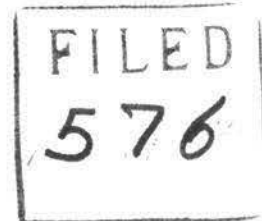


Answer by letter-Wieler

OPINION LETTER NO. 576

December 24, 1970

Mr. William P. Wright, Supervisor  
Department of Liquor Control  
Broadway State Office Building  
Jefferson City, Missouri 65101



Dear Mr. Wright:

This is in response to your request for an opinion concerning the disposition of funds derived from the sale of contraband liquors pursuant to Section 311.840, RSMo 1969.

Section 311.840, sub. 4, provides that the residue or balance of such funds, after the payment of storage and costs of the proceedings in any action wherein seized property has been declared contraband and ordered sold, shall be paid into the general revenue fund of the State of Missouri, Section 311.810, RSMo 1969, in pertinent part, provides:

". . . All intoxicating liquor unlawfully manufactured, stored, kept, sold, transported or otherwise disposed of, and the containers thereof and all equipment used or fit for use in the manufacture or production of the same, including all grain or other materials used, in the unlawful manufacture of intoxicating liquor, and which are found at or about any still or outfit for the unlawful making or manufacture of intoxicating liquor, are hereby declared contraband, and no right of property shall be or exist in any person or persons, firm, or corporation owning, furnishing or possessing any such property, liquor, material or equipment; but all such intoxicating liquors, property, articles

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and things, shall be sold upon an order of the court and in the manner provided in this chapter and the proceeds thereof shall be applied on the payment of any fine and costs lawfully assessed against any person or persons convicted of the unlawful manufacture, production, transportation, sale, gift, storing, or possession of intoxicating liquor, . . ."

In dealing with the predecessors of these statutes (Section 4917, Laws 1949, page 32 and R.S. 1939, Section 4916; Laws 1945, page 1043), this office issued an opinion stating that that portion of the statute which provided for the payment of monies derived from the sale of seized property declared contraband into the general revenue fund of the State of Missouri, following the payment of fine and the costs assessed therein, was contrary to Article IX, Section 7 of the Missouri Constitution, which provides that the clear proceeds of all penalties, forfeitures and fines collected for any breaches of the penal laws of the state are to be distributed to the schools of the several counties according to law. Therefore, we held that the residue of the amount received from the sale of such contraband after the payment of the fine assessed, if any, and the costs of the proceedings should be placed in the county school fund. See Opinion No. 10, issued to the Honorable Joseph M. Bone, Prosecuting Attorney, on June 24, 1949 (copy enclosed).

This opinion was based upon the premise that a sale of liquor under the circumstances outlined in the statutes amounted to a forfeiture for a breach of the penal laws of this state and, therefore, the clear proceeds of such sale were subject to the provisions of Article IX, Section 7 of the Missouri Constitution. In *New Franklin School Dist. No. 28, Howard County v. Bates*, 225 S.W.2d 769, 774 (Mo. 1950), the Missouri Supreme Court held that the words "penal laws of the state" as used in Section 7, Article IX of the Constitution refer to statutory enactments fixing or providing for penalties, forfeitures and fines and for their assessment and collection. Since the Missouri Liquor Control Act sets forth penalties for the unlawful manufacture, storage, sale or transportation of intoxicating liquor, one of which is the forfeiture and sale of the liquor itself, it is our view that the monies derived from such a forfeiture are proceeds collected for a breach of the penal laws of this state.

Therefore, it is our opinion that the residue of the amount received from the sale of contraband liquor after the payment of

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the fine assessed, if any, the cost of storage and the cost of the proceedings amounts to "clear proceeds" as contained in Article IX, Section 7 of the Missouri Constitution and should be placed in the county school fund.

Yours very truly,

JOHN C. DANFORTH  
Attorney General

Enclosure: Op. No. 10  
6-24-49, Bone