



OFFICES OF THE  
ATTORNEY GENERAL OF MISSOURI  
JEFFERSON CITY

JOHN C. DANFORTH  
ATTORNEY GENERAL

June 13, 1972

OPINION LETTER NO. 154

Honorable George W. Parker  
Representative, District 120  
819 Crestland Avenue  
Columbia, Missouri 65201

Dear Representative Parker:

This letter is in response to your request for an opinion on the following submitted question:

"Does [sic] the provisions of 146.052, RSMo., Sup 1971, which provides that the director of revenue shall maintain the intangible tax funds in banking institutions selected by him, constitute an unconstitutional delegation of power?"

Article IV, Section 15, Missouri Constitution, 1945, provides, in pertinent part:

"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, . . ."

Likewise, Article III, Section 36, Missouri Constitution, 1945, provides, in pertinent part:

"All revenue collected and money received by the state shall go into the treasury . . ."

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The initial question to be answered is what moneys are required to go "into the state treasury." Each of the above two constitutional sections has as its source Article IV, Section 43 of the Constitution of 1875 which stated, in pertinent part:

"All revenue collected and money received by the state from any source whatsoever, shall go into the treasury. . . ."

The above proviso was construed in the 1924 case of State ex rel. Thompson v. Board of Regents for Northeast Missouri State Teachers' College, 264 S.W. 698 (Mo. en banc 1924) not to apply to money paid the defendant Board of Regents on account of fire insurance losses since the premiums for such insurance had been paid from tuition fees. Of significance in the court's opinion was its interpretation of the phraseology "revenue collected and money received by the state from any source whatsoever" to mean the "current income of the state from whatsoever source derived which is subject to appropriation for public uses." (Id. at 700). The court's interpretation of the constitutional mandate emphasizes the fact that revenue or moneys received, which are to be paid into the state treasury, are only those moneys received pursuant to legislative fiat that are considered part of the state's current income. See also, State ex rel. Fath v. Henderson, 60 S.W. 1093 (Mo. 1901).

Article X, Section 4(c), Missouri Constitution, 1945, provides, in pertinent part, that the proceeds of the tax on intangible personal property are to be:

". . . assessed, levied and collected by the state and returned as provided by law, less two percent for collection, to the counties and other political subdivisions of their origin, in proportion to the respective local rates of levy."

Are moneys collected pursuant to the Missouri Intangible Personal Property Tax Law [Chapter 146, RSMo 1969] moneys within the meaning of the constitutional provisions, Article IV, Section 15 and Article III, Section 36, supra? A previous opinion of this office, No. 223, 10-27-69, Owens, copy enclosed, answered the question in the negative.

It is the opinion of this office that Section 146.052, RSMo Supp. 1971, does not fall within the constitutional provisions of either Article IV, Section 15 or Article III, Section 36, Missouri Constitution, 1945, requiring "revenue" and "money" received by

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the state to be deposited in the state treasury. The authority given the director of revenue pursuant to Section 146.052, RSMo Supp. 1971, therefore, does not entail an unconstitutional delegation of power.

Yours very truly,

A handwritten signature in cursive script, appearing to read "John C. Danforth".

JOHN C. DANFORTH  
Attorney General

Enclosure: Op. No. 223  
10-27-69, Owens