

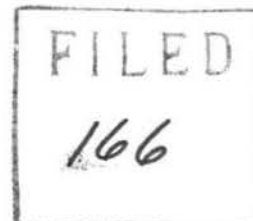
STATE FUNDS:
BOARD OF FUND COMMISSIONERS:

The Board of Fund Commissioners may not transfer funds in the Second State Building Fund to general revenue.

OPINION NO. 166

May 14, 1973

Honorable James I. Spainhower
Treasurer of Missouri
State Capitol Building
Jefferson City, Missouri 65101



Dear Mr. Spainhower:

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

"Can the Board of Fund Commissioners transfer the balance in the demand checking account of the 2nd State Building Fund to General Revenue?"

Your opinion request goes on to note:

"The 2nd State Building Fund bonds were originally issued in 1957 for a total amount of \$75,000,000.00. All of these funds have been expended with the exception of \$20,379.77 remaining in the fund. There are no requisitions or obligations outstanding against this fund."

Article III, Section 37(a) of the State Constitution provides for the issuance of the Second State Building Fund Bonds. The proceeds of those bonds are to be used:

". . . for the purpose of repairing, remodeling or rebuilding, or of repairing, remodeling and rebuilding state buildings and properties at all or any of the penal, correctional and reformatory institutions of this state, the state training schools, state hospitals and state schools and other eleemosynary institutions of this state, and institutions of higher education of this state, and for building additions thereto and additional buildings where necessary, and for furnishing and equipping any such improvements."

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That section goes on to provide:

". . . The proceeds of the sale or sales of any bonds issued hereunder shall be paid into the state treasury and be credited to a fund to be designated the 'Second State Building Fund.'

"The proceeds of the sale of the bonds herein authorized shall be expended for the purposes for which the bonds are hereinabove authorized to be issued."

In connection with the issuance of the Second State Building Fund Bonds, the legislature enacted:

"An Act authorizing the issuance and sale of bonds to the amount of Seventy-five Million Dollars (\$75,000,000) for the state of Missouri in accordance with the provisions of Section 37(a), Article III of the Constitution of the State of Missouri; defining the powers and duties of the Board of Fund Commissioners of the State of Missouri . . ." Laws 1955, p. 769.

Sections 5 and 6 of that Act provide:

"Section 5. The moneys realized from the sale of bonds under the provisions of this act shall be paid into the state treasury, to the credit of the Second State Building Fund, and shall be appropriated by the general assembly for the purposes for which said bonds are hereinabove authorized to be issued and for the payment of all necessary expenses incidental thereto.

"Section 6. The State Treasurer, with the approval of said Board of Fund Commissioners, is authorized to deposit all of the moneys in the Second State Building Fund in any of the qualified state depositories of the state. All such deposits shall be secured in such manner and shall be made upon such terms and conditions as are now or may hereafter be provided for by law relative to state deposits. Any interest received on such deposits shall be credited to the Second State Building Fund."

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Thus it may be seen that both the Constitution and the Act of the General Assembly require that the proceeds from the issuance of the Second State Building Fund Bonds be placed in a special fund in the state treasury. Such proceeds are available for appropriation by the General Assembly for the purposes mentioned in the first quoted portion of Article III, Section 37(a). The Board of Fund Commissioners has no authority to transfer moneys in the separate fund to the general revenue fund.

Your opinion request indicates that the balance of the Second State Building Bond Fund is now held in demand deposits. Your attention is directed to Section 6 of the Act quoted above. That section permits you to invest the money now in the fund to earn interest to be credited to the fund.

CONCLUSION

It is the opinion of this office that the Board of Fund Commissioners may not transfer funds in the Second State Building Fund to general revenue.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Charles A. Blackmar.

Very truly yours,

A handwritten signature in black ink, appearing to read "John C. Danforth". The signature is written in a cursive style with a prominent initial "J" and a long, sweeping underline.

JOHN C. DANFORTH
Attorney General