

STATE TREASURER: PUBLIC SERVICE COMMISSION: MOTOR VEHICLE FUNDS:  
State treasurer's duties respecting licenses fees on motor whicles  
under Section 5728, R. S. Mo. 1939

January 12, 1942

Hon. Wilson Bell  
State Treasurer  
Treasury Department  
Jefferson City, Missouri



Dear Mr. Bell:

This is in reply to your letter of recent date  
wherein you submit the following questions:

- "1. Can I lawfully designate a member of the staff of the Public Service Commission as an assistant cashier of the State Treasurer, such person to be on duty at the office of the public Service Commission and to receive the fees required in said Section 5728?
- "2. Can the Public Service Commission lawfully pay such assistant cashier of the State Treasurer out of its, Public Service Commission's, funds?
- "3. Can the Public Service Commission pay the premium on the bond which I may require such person to give?"

Section 5728, R. S. Mo. 1939, to which you refer  
in your letter, provides in part as follows:

"(a) In addition to the regular registration license fee imposed on all motor vehicles in this state, and its personal property tax, every motor carrier, except as provided in section 5721 shall, at the time of the issuance of a certificate of convenience and necessity and/or an interstate permit, and annually thereafter, on or between January 1 and January 15 of each calendar year, pay to the state treasurer of the State of Missouri the annual license

fee, as set out in this article, for the maintenance and repair of the public highways; all such fees levied upon the issuance of a license to any motor carrier for any motor vehicle hereunder shall be reckoned from the beginning of the quarter in which such license was issued: \* \* \* \*.

" \* \* \* \* The commission, upon the issuance of a license for any vehicle, as defined in this article, shall notify the state treasurer who shall receive the license fee for such vehicle; and the commission shall also notify the state treasurer of the number of lineal miles of route used by the owner of that vehicle and the number of miles in which it operates on state roads, the number of miles it operates on county roads and the number of miles it operates on city roads not maintained by the state highway commission, and the state treasurer shall distribute and credit to the state highway commission and to the proper county or city in the proportion that the number of lineal miles of route used by the licensed motor vehicle in each case bears to the number of lineal miles of route over which such carrier operates and the said funds so derived from said license shall be used for the maintenance and repair of the highways and streets over which said carrier operates."

From your request you indicate that you do not contemplate paying the assistant cashier who handles these funds out of your appropriation. That being the case, you are not confronted with the provisions of Section 48 of Article 4, of the Constitution which is as follows:

"The General Assembly shall have no power to grant, or to authorize any county or municipal authority to grant any extra compensation, fee or allowance to any public officer, agent, servant or contractor, after service has been rendered or a contract has been entered into and performed in whole or in part, nor pay nor authorize

the payment of any claim hereafter created against the State, or any county or municipality of the State, under any agreement or contract made without express authority of law; and all such unauthorized agreements or contracts shall be null and void."

We also note that the appropriation to your department does not mention assistant cashiers.

In our research on this question, we fail to find any statute providing for the appointment of such assistant cashier. However, from an examination of the various statutes imposing different duties on the State Treasurer we think he has implied powers to appoint such assistants as are needed to carry out those duties. In the case of State ex rel. Hueller v. Thompson, 289 S. W. 338, the right of the Board of Permanent Seat of Government to appoint an assistant commissioner was authorized. It also authorized the appointment of as many watchmen as is necessary, but did not fix their salary. The court disposed of the question in the following language:

"Since the Legislature has not, by any general law, fixed the compensation of any employees or appointees of the board of the permanent seat of government, except that of the commissioner thereof, and has not named or limited the number of such employees or appointees, save and except certain temporary employees (section 9267, R. S. Mo. 1919), it is to be presumed that it intended to give the board a discretion as to the kind and number of assistants and helpers necessary to carry on the duties enjoined upon the board by said chapter 84, as well as the compensation of such employees, helpers, and assistants. Indeed, the number of persons necessary to take care of and protect the property of the state, as contemplated and required by law, is a matter which the Legislature could not foresee. Therefore the placing of no inhibition upon the employment of such help, but to leave the same to the wisdom and discretion of the board of the permanent seat of government, reflects a wholesome legislative policy. We hold therefore, that the board, in its discretion, had the power to appoint an assistant commissioner and to fix his compensation. \* \* \* \* \*"

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Following the ruling in this case, if an assistant cashier is needed by your department, to perform the duties imposed upon you, it seems that you would have implied authority to make such an appointment.

Upon the question of the authority of the Public Service Commission to pay the salary of this assistant cashier, we refer you to the Public Service appropriation for this biennium, Laws of Mo. 1941, pages 153, 154. You will note that that appropriation act does not mention an assistant cashier. Section 19 of Article 10 of the Constitution provides as follows:

"No moneys shall ever be paid out of the treasury of this state, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made, or a warrant shall have issued therefor, within two years after the passage of such appropriation act; and every such law, making a new appropriation, or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such sum or object. A regular statement and account of the receipts and expenditures of all public money shall be published from time to time."

Therefore, if the appropriation act fails to mention an assistant cashier, then the Public Service Commission would not be authorized to pay a salary out of that appropriation.

However, by your request, you suggest that a member of the staff of the Public Service Commission will be designated as assistant cashier. If this procedure is followed and if such person, if told he is designated by you as assistant cashier, is in fact a member of the staff of the Public Service Commission, then we think said Section 19 of Article 10, supra, would not be violated by paying such member of the staff out of the appropriation of the Public Service Commission for this biennium. Of course this is conditioned on the fact that the appropriation to the Commission for this biennium includes the compensation of such staff member.

On the question of the Public Service Commission paying the premium on the bond of the assistant cashier, we do not find any statute authorizing such a bond. However, such person may execute a common law bond which would be binding on him and his sureties. Such a bond would be classed as a common law bond. The assistant cashier, in the absence of statute requiring such a bond, could give a voluntary bond which would be binding on him and his sureties. Such bonds have been held proper and binding on the parties in two cases in this state, namely *State v. Cochrane*, 264 Mo. 581, 175 S. W. 599, where the court held at l. c. 595, as follows:

"For the reason that the bond in suit shows on its face terms, involving the assumption of an obligation by the appellant Surety Company, to indemnify the public, against any default of its principal in the performance of its duties as a warehouseman (aside from stipulations to comply with the inspection laws), we think that instrument is a valid common-law obligation and enforceable in this action by the plaintiff, who though not named in the bond, is entitled to sue in the name of the State for the breach of a bond made for its benefit. (*Barnes v. Webster*, 16 Mo. supra.) The judgment is therefore affirmed. All concur."

And, *Loinberger v. Krieger*, 88 Mo. 160; *La Crosse Lumber Company v. Schwartz*, 163 Mo. App. 659, 147 S. W. 501, where the Court at l. c. 664, said:

"The instrument is not a statutory bond but we think it is good as a common law bond. A bond though voluntary and not authorized by any statute is valid if it does not contravene public policy nor violate any statute. (*Barnes v. Webster*, 16 Mo. 258.) And it is a well-settled rule that a bond taken by a public officer in attempted compliance with a statute is good as a common law bond though it falls short of fulfilling the requirements of the statute. (*Waterman v. Frank*, 21 Mo. 108; *State v.*

Thomas, 17 Mo. 503.) Since the bond was not a statutory obligation and was not executed to the state, plaintiff was not compelled to sue in the name of the state to the use of plaintiff. The only theory on which plaintiff who was not a party to the bond may recover upon it is that it was executed for his benefit. \* \* \* \* \*

Referring to the appropriations to the Treasury Department and Public Service Commission, Laws of Missouri, pages 133 and 153, it will be seen that the appropriation for "operation" includes payments of premiums on bonds for each department. However, since the bond is to be executed by the person for the performance of his duties as assistant cashier, which office would be under your department, we do not think that the payment for the premium on this bond could be taken out of the Public Service Commission appropriation. We are further supported in our position by the fact that the appropriation to the Public Service Commission for administering the law pertaining to motor bus and truck service does not include an item for the payment of premiums on bonds. Section 56, page 154, Laws of Missouri, 1941.

#### CONCLUSION

From the foregoing, it is the opinion of this department that the State Treasurer may designate a member of the staff of the Public Service Commission as assistant cashier, which person may be on duty at the office of the Public Service Commission to receive the fees required under Section 5728, R. S. Missouri, 1939, pertaining to motor bus and truck traffic.

We are further of the opinion that the Public Service Commission may not pay such person as assistant cashier to the State Treasurer out of its appropriation, but such person may be paid as a staff member of the Commission.

We are also of the opinion that the Public Service Commission may not pay the premium of the bond on such Assistant cashier but that the State Treasurer may pay same

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out of his appropriation providing funds are available.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

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VANE C. THURLO  
(Acting) Attorney General

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