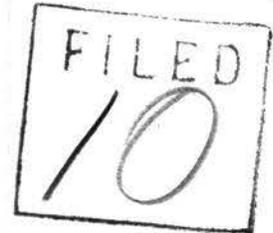


STATE PARK BOARD: State Park Board must deposit fees and other income in the State Treasurer's Office and cannot disburse money that has not been appropriated to that department.

September 15, 1938

Honorable I. T. Bode
Director, State Park Board
Jefferson City, Missouri



Dear Sir:

This is to acknowledge receipt of your request for an opinion from this department under date of September 9, 1938, which is as follows:

"The Park Board has \$4200.00 on deposit in a local bank which has been collected from the concessions in the state parks during the period in which the State Park Board has been in existence until the present time. More particularly from July 1, 1937 to, and including, August 31, 1938.

"We are requesting an opinion as to the disposition of this money and other similar money which will be collected from the concessions in the parks in the future.

"A very nominal part of this bank balance was collected from the sale of property which had lost its usefulness to the Department, such as surplus feed and other items of a nominal nature. Collections from camping fees are also included in this bank balance."

Session Laws, 1937, page 520, which is the creation of the State Park Board, reads as follows:

"Sec. 1. There is hereby created a State Park Board to consist of the Governor, Attorney General and Director of Conservation, the members of said Board to act without compensation. The Director of Conservation shall also be known as the Director of State Parks.

"Sec. 2. The State Park Board shall have the power to acquire by purchase, eminent domain or otherwise, all property necessary, useful or convenient for the use of said Park Board or the exercise of its powers hereunder necessary for the recreation of the people of the State of Missouri. In the event the right of eminent domain be exercised, it shall be exercised in the same manner as now or hereafter provided for the exercise of eminent domain by the State Highway Commission. Said Park Board shall have the power to make and promulgate all rules and regulations as it may deem necessary for the proper maintenance, improvement, acquisition and preservation of all state parks. Said park board is hereby authorized to employ such persons or assistants as may be necessary and may fix the compensation of persons thus employed within the amount appropriated therefor by the Legislature. All vouchers for the payment of bills or for compensation shall be drawn and approved by the Director of State Parks and when presented to the State Auditor shall be paid out of the funds appropriated for such purposes.

"Sec. 3. All laws or parts of laws in conflict with the provisions of this Act are hereby repealed insofar as such laws are in conflict with this act, and expressly Section 8220, Revised Statutes of Missouri, 1929."

Section 43, Article IV, of the Constitution of Missouri reads in part as follows:

"All revenue collected and moneys received by the State from any source whatsoever shall go into the treasury, and the General Assembly shall have no power to divert the same, or to permit money to be drawn from the treasury, except in pursuance of regular appropriations made by law.
* * *"

In the case of State ex rel. Kessler v. Hackmann, State Auditor, 264 S. W. 366, 1. c. 367, the court said:

"Relators cite the case of State ex rel. v. Wilder, 199 Mo. 470, 97 S. W. 940, where this court had under consideration funds of the insurance department, to show that the money in the insurance department was not public money in a sense that it was subject to be appropriated for any general purpose. That was a mandamus proceeding seeking to compel the state auditor to issue a warrant in payment of an account incurred by the insurance department. In that case, however, there was an appropriation by act of the Legislature.

"On the other hand, this court has held that a fund, raised by an act for a special purpose, could not be paid out of the state treasury except upon an appropriation by an act of the Legislature. State ex rel. Fath et al. v. Henderson, 160 Mo. 190, loc. cit. 214, 60 S. W. 1093; State ex rel. v. Gordon, 236 Mo. 142, loc. cit. 158, 139 S. W. 403. In the case last cited the court had under consideration a fund for the support and maintenance of the game department. It was held that the creation of a special fund is not a continuing appropriation of the fund, or of any part of it, to pay accounts drawn against it.

That the creation of the fund is one thing, and the appropriation of money to pay accounts against the fund is quite another thing. The language of the Constitution is unequivocal; it requires an appropriation before payment of money received by the state 'from any source whatsoever.' The money collected by the board is received by the state; it goes into the state treasury. To make it more specific, the requirement that an appropriation by the Legislature will be necessary before money can be paid out of the treasury of the state, it is applied, not only to state funds, but to 'any of the funds under its management.'

"It is manifest that the intention of the Legislature in placing the funds in the hands of the state treasurer was, not only to provide official information as to its disbursement, but to keep the expenses of the department within the limits provided by the Legislature. The Legislature may be presumed to have had the constitutional restrictions in mind when they passed the act creating the fund."

In the case of State ex rel. Thompson, State Treasurer v. Board of Regents for Northeast Missouri State Teachers' College, 264 S. W. 698, the court held that money received for tuition and other fees as paid by the students need not be turned into the state treasury for the reason that the enactment of the State Legislature in respect to the State Teachers' College provided for the use of the funds in the repair and upkeep of the school, but the court also said as follows, 1. c. 699:

"This provision, it will be seen from its terms, which are wisely chosen as a limitation upon power, is restricted to 'revenue collected and money received by the state from any source whatsoever.' By revenue, whether its

September 15, 1938

meaning be measured by the general or the legal lexicographer, is meant the current income of the state from whatsoever source derived which is subject to appropriation for public uses. This current income may be derived from various sources, as our numerous statutes attest, but, no matter from what source derived, if required to be paid into the treasury, it becomes revenue or state money; its classification as such being dependent upon specific legislative enactment, or, as aptly put by the respondent, state money means money the state, in its sovereign capacity, is authorized to receive, the source of its authority being the Legislature. With this limitation--and the Constitution itself is but an instrument of limitations--it should be strictly construed. Thus construed, the spirit which prompted the adoption of the provision is fully recognized and its purpose is promoted. Unless, therefore, it can be successfully contended, in harmony with well-recognized rules of interpretation, that the board of regents of the college is the state, and that moneys received by it other than from appropriations is state money, the constitutional provision will afford no support to the relator's contention."

It will be noticed as above set out in Article IV, Section 43, of the Constitution of Missouri, the General Assembly is limited and has no power to divert any of the revenue collected and moneys received by the State, or to permit money to be drawn from the treasury except by regular appropriation made by the Legislature. In view of this holding, it necessarily goes without saying that the money on hand and collected by the State Park Board, as described in your request, cannot be spent or disbursed for any pur-

pose except by way of direct appropriation from the Legislature. Also, according to this section of the Constitution, all revenue collected and moneys received by the State from any source shall go into the treasury.

Section 1, Session Laws, 1933, page 415, reads as follows:

"All fees, funds and moneys from whatsoever source received by any department, board, bureau, commission, institution, official or agency of the state government by virtue of any law or rule or regulation made in accordance with any law, shall, by the official authorized to receive same, and at stated intervals, be placed in the state treasury to the credit of the particular purpose or fund for which collected, and shall be subject to appropriation by the General Assembly for the particular purpose or fund for which collected during the biennium in which collected and appropriated. The unexpended balance remaining in all such funds (except such unexpended balance as may remain in any fund authorized, collected and expended by virtue of the provisions of the Constitution of this State), shall at the end of the biennium and after all warrants on same have been discharged and the appropriation thereof has lapsed, be transferred and placed to the credit of the ordinary revenue fund of the state by the state treasurer. Any official or other person who shall willfully fail to comply with any of the provisions of this section, and any person who shall willfully violate any provision hereof, shall be deemed guilty of a misdemeanor; provided, that in the case of state educational institutions there is excepted herefrom, gifts or trust funds from whatever source; appropriations, gifts or grants from the Federal Government, private organizations and individuals; funds for or

September 15, 1938

from student activities, farm or housing activities, and other funds from which the whole or some part thereof may be liable to be repaid to the person contributing the same, and hospital fees; all of which excepted funds shall be reported in detail quarterly to the Governor and biennially to the General Assembly."

According to the above section, it specifically states that all fees, funds and moneys from whatsoever source received by any department, board, bureau, commission, institution, official or agency of the state government by virtue of any law or rule or regulation, shall be placed in the state treasury to the credit of the particular purpose or fund for which collected, and shall be subject to appropriation by the General Assembly. In creating the State Park Board, no particular fund was set apart separately for that board, as was done in Section 8220, R. S. Mo. 1929, which was repealed by this Section 1, Session Laws of 1933, page 415. It necessarily follows that the money should be deposited in the general fund of the state treasury.

CONCLUSION

In view of the above authorities, it is the opinion of this department that money received by the State Park Board from any source, including camping fees and sale of surplus feed and other items, must be deposited in the general fund of the state treasury and cannot be disbursed by the State Park Board for the reason that the board is limited to the appropriation act for the State Park Board.

Respectfully submitted

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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