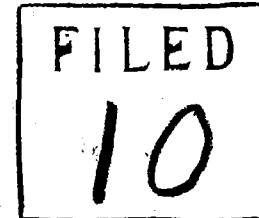


SCHOOL FUND: Fines for violation of the Criminal Laws, including the violation of the Fish and Game or
CONSERVATION: Conservation Laws and Regulations, should be paid to the county school fund; the magistrate is not under a duty of forwarding the same to the Department of Revenue; the same does not go to the credit of the Conservation Commission.

January 22, 1947



Honorable A. J. Bolinger
Judge of the Probate Court
Versailles, Missouri

Dear Sir:

This acknowledges your request, which is as follows:

"Section 7, Article 9 of the recent constitution not much changed from Section 8, Article 11, of the 1875 Constitution provides, that all fines and penalties for breach of the penal laws of the state shall be paid into the county school fund.

"Sections 10 and 11 of Senate Bill 366 make it the duty of the Magistrate to report to the Conservation Commission all fines assessed for violation of the fish and game law and to transmit the said monies to the department of revenue; which shall deposit the same to the credit of the Conservation Commission.

"Are not these provisions in conflict with the constitution, and to whom shall we pay fines collected for such violations?"

Replying thereto, it appears that Senate Committee Substitute for Senate Bill No. 366 repeals Sections 8864 to 8882, R.S. 1939, and enacts in lieu thereof twenty-seven new sections covering the powers of the Conservation Commission. Section 11 of said bill provides, in part, as follows:

"All moneys payable under the provisions of this chapter shall be promptly transmitted to the division of collection in the department of revenue, which shall

deposit the same in the state treasury
to the credit of the Conservation Commission.
* * * *

Your question becomes one of statutory construction and perhaps more so than it does of whether there is a conflict between the constitutional provisions. Your question concisely stated appears to be this: Should fines collected for breach of the laws or regulations of the Conservation Commission be sent to the Department of Revenue and be by them deposited in the State treasury to the credit of the Conservation Commission?

Section 7 of Article IX of the 1945 Missouri Constitution provides, among other things, with reference to school moneys, as follows:

"* * * * All interest accruing from investment of the county school fund, the clear proceeds of all penalties, forfeitures and fines collected hereafter for any breach of the penal laws of the State, the net proceeds from the sale of estrays, and all other moneys coming into said funds shall be distributed annually to the schools of the several counties according to law."

Section 43 of Article IV of the 1945 Missouri Constitution, with reference to the Conservation Commission, provides:

"The fees, moneys, or funds arising from the operation and transactions of the commission and from the application and the administration of the laws and regulations pertaining to the bird, fish, game, forestry and wildlife resources of the state and from the sale of property used for said purposes, shall be expended and used by the commission for the control, management, restoration, conservation and regulation of the bird, fish, game, forestry and wildlife resources of the state, including the purchase or other acquisition of property for said purposes, and for the administration of the laws pertaining thereto, and for no other purpose."

Section 8 of Article XI of our 1875 Constitution, pertaining to the county school fund, provided:

"All moneys, stocks, bonds, lands and other property belonging to a county school fund, also the net proceeds from the sale of estrays, also the clear proceeds of all penalties and forfeitures, and of all fines collected in the several counties for any breach of the penal or military laws of the State, and all moneys which shall be paid by persons as an equivalent for exemption from military duty, shall belong to and be securely invested and sacredly preserved in the several counties as a county public school fund; the income of which fund shall be faithfully appropriated for establishing and maintaining free public schools in the several counties of this State!"

Section 16 of Article XIV of our 1875 Constitution, pertaining to the powers of the Conservation Commission, which was adopted as an amendment in 1937, provided, among other things, the following:

" * * * * The fees, monies, or funds arising from the operation and transactions of said Commission and from the application and the administration of the laws and regulations pertaining to the bird, fish, game, forestry and wild life resources of the State and from the sale of property used for said purposes, shall be expended and used by said Commission for the control, management, restoration, conservation and regulation of the bird, fish, game, forestry and wild life resources of the State, including the purchase or other acquisition of property for said purposes, and for the administration of the laws pertaining thereto and for no other purpose. * * *"

It will be seen from the above that the provisions of the conservation amendment, which was in 1937 adopted as part of the Constitution of 1875, were carried forward into the 1945 Constitution without change insofar as concerns the powers of the Conservation Commission over monies, fees or funds arising from the operation and transactions of the Commission and from the application and administration of the laws and regulations pertaining to the bird, fish, game, forestry and wildlife resources of the State, etc. It would seem, therefore, that if there is any change in the constitutional law regarding disposition of fines, the change must be on account of changes in the constitutional provisions of Section 7 of Article IX of the 1945 Constitution from what the provisions on the same subject were in Section 8 of Article XI of the 1875 Constitution. Both of said last two mentioned sections are found in the Constitution under the article on education.

Said Section 7 of Article IX of the 1945 Constitution has two new provisions, to wit, (1) that "all real estate, loans and investments now belonging to the various county and township school funds: shall be liquidated and reinvested in bonds, "and sacredly preserved as a county school fund," and (2) that any county may by a majority vote "elect to distribute annually to its schools the proceeds of the liquidated school fund," in such manner as may be prescribed by law.

The said Section 8 of Article XI of the 1875 Constitution provides that "the clear proceeds of all penalties and forfeitures, and of all fines collected in the several counties for any breach of the penal or military laws of the State, * * * shall belong to and be securely invested and sacredly preserved in the several counties as a county public school fund; the income of which fund shall be faithfully appropriated for establishing and maintaining free public schools in the several counties of this State."

Section 7 of Article IX of the 1945 Constitution provides that the county school fund shall consist of the present, at that time, county school funds but that they be converted into bonds "and sacredly preserved as a county school fund." It also gives the option by a majority vote to "distribute annually" said funds, if and when the Legislature so provides by law.

In the 1945 Constitution said Section 7 provides that

all interest accruing from the county school fund shall be distributed annually to the several county schools "according to law." In the 1875 Constitution the similar section (8 of Article XI) provided that "the income of which fund shall be faithfully appropriated for establishing and maintaining free public schools," and this provision appears to be the same in the one as in the other Constitution.

However, said Section 7 of Article IX of the Constitution of 1945, while using the same wording as to fines, to wit, "the clear proceeds of all penalties, forfeitures and fines collected hereafter for any breach of the penal laws of the State," requires that they be "distributed annually to the schools of the several counties according to law." But Section 8 of Article XI of the 1875 Constitution required said clear proceeds of all penalties and forfeitures, and of all fines collected for breach of the penal laws, to be (not distributed) "securely invested and sacredly preserved" as a county public school fund.

While it will be seen that there are a number of changes made by the 1945 Constitution from the provisions of the 1875 organic law, yet they do not on principle or in terms change the disposition of the fines assessed and collected on account of violation of the Fish and Game Law. The fact that the new Constitution provides the money arising from such fines shall be distributed instead of preserved (as the old Constitution did) can be no reason for saying they shall be paid to a different body.

The section in the old Constitution used the words "shall belong to" and be invested and sacredly preserved as a school fund, but the meaning of the new Constitution, that these same funds "shall be distributed annually to the schools of the several counties according to law," is identical with the meaning of the parallel section in the old Constitution. In both, the section in the old Constitution and the section in the new Constitution, the fundamental law requires said money to be paid to the school fund. The former required it to be preserved and all the interest paid out to the schools, while the latter does not require it to be preserved, but provides it shall be distributed. Distributed to whom? The Constitution definitely answers that question. It says it "shall be distributed annually to the schools of the several counties."

Bearing in mind the presumption of constitutionality of statutes enacted by the Legislature, we have considered this

question with a view of reaching the conclusion it was constitutional for the Legislature to provide that fines collected because of violation of the conservation laws should be paid to the Commission, but we cannot do so because there is no change in the fundamental law from which we may conclude that under the 1945 Constitution said money arising from such fines goes in a different way from what it did prior to the adoption of the 1945 Constitution.

Both Constitutions use the same language in defining what property is covered into the school fund. Both say "the clear proceeds of all penalties (and), forfeitures and (of all) fines for any breach of the penal laws" shall go to the county school fund, and the conclusion necessarily follows that the construction of the provisions of the section of the new Constitution is the same as that of the old Constitution.

This leads to inquiry as to what construction should the similar section in the old Constitution have. We have made inquiry and are informed that ever since the adoption of the 1937 amendment creating the Conservation Commission the administrative officials having in charge the enforcement of these laws have been paying said fines to the county school funds of the various counties. The construction of a statute by the executive department having charge of the enforcement of the same over a period of years, though not binding conclusively on the courts, is given weight, in *State ex rel. Hanlon et al. v. City of Maplewood et al.*, 99 S.W. (2d) 138, 231 Mo. App. 739, The Court applied the above doctrine, and said, l.c. 143, E.W:

"This construction of the statute by respondents appears to be reasonable in view of the language of the statute itself, and is entitled to great weight because it is the construction of those who, under all the provisions of the article prescribing the duties of officers of such cities, are charged with the responsibility of the government thereof. *State ex rel. Gass v. Gordon*, 266 Mo. 394, 412, 181 S.W. 1016, 1021, Ann. Cas. 1918B, 191."

Further, this same question that is here considered was ruled by the Supreme Court of Missouri, en banc, in 1906, in the case of *State ex rel. v. Warner*, 94 S.W. 962, 197 Mo. 650,

where it was held that:

"The fines authorized to be imposed for a violation of the Game and Fish law of 1905 belong to the school fund, and section 64 of that act, requiring all such fines to be paid into the State Treasury to be applied in meeting the expenses of enforcing the law, is in conflict with section 8 of article 11 of the Constitution, which requires all penalties and forfeitures collected in the several counties for any breach of the penal or military laws of the State to be added to the county school fund, and such fines when collected must be added to that fund."

The statute there considered, in terms, provided that the moneys collected from fines, penalties or forfeitures under the Fish and Game Law should be paid to the State Treasurer and placed to the credit of the game protection fund. The Court held that such a statute was unconstitutional because the section of the Constitution requiring the proceeds of fines for violation of the penal laws to be paid to the schools was violated. The opinion there recites, l.c. 654 Mo:

"By section 66, it is provided that 'moneys collected from fines, penalties or forfeitures, under this act, belonging to the game protection fund, shall be paid over by the officer authorized to collect said money to the State Treasurer on or before the first day of each month.'

"By section 64, it is enacted that 'all moneys sent to the State Treasurer in payment of . . . fines, penalties, forfeitures, shall be set aside by the State Treasurer and shall constitute a fund, known as the "Game Protection Fund," for the payment of the salary of the state game and fish warden, his necessary expenses, also for the payment of deputy game and fish wardens and their necessary expenses.'

"By other sections, the game and fish warden is authorized to appoint deputies for each Congressional district, and, furthermore, by section 53, 'all sheriffs, deputy sheriffs, marshals, constables or other peace officers, are declared to be ex officio game and fish wardens.' The act bristles with impaling provisions, the violation of which are denounced, seriatim, as misdemeanors, to be punished as criminal offenses by fines (and by imprisonment, in case the fines are not paid), ranging from \$5 to \$1,000, and the scheme is that all these fines should be paid to the State Treasurer to swell the corpus of the 'Game Protection Fund,' out of which fund comes the expenses of enforcing the law.

"At a certain time, one Weber was convicted before a justice of the peace in Jackson county of a misdemeanor for violating one of the provisions of said act, and was mulcted in a fine of \$50, which he paid. This fine was turned over to respondent, Warner, as county treasurer of Jackson County, who credited the same to the school fund of that county. Whereat relator brought this original proceeding to compel, by the moving writ of mandamus, said county treasurer to turn over said fine to the State Treasurer to be by him credited to the 'Game Protection Fund.'

"An alternative writ issued, directed to respondent, requiring him to pay over said \$50 to the State Treasurer for the use of said fund, or show cause why he has not so done. To this alternative writ, respondent made return interposing divers grounds as 'cause' for not obeying our writ. The only cause, deemed of consequence, is that where-by the constitutionality of those provisions of the act requiring such fines to be converted into the state treasury and into said fund is challenged. It is insisted said provisions violate section 8, article 11, of our Constitution, reading thus:

"All . . . , the clear proceeds of all penalties and forfeitures, and of all fines collected in the several counties for any breach of the penal or military laws of the State . . . , shall belong to and be securely invested and sacredly preserved in the several counties as a county public school fund; the income of which fund shall be faithfully appropriated for establishing and maintaining free public schools in the several counties of this State.'

"On the coming in of this return, relator demurred thereto. Thereby the question submitted becomes one of law and the issue will be treated as single and sharply defined as pointed out.

"Does the statutory disposition of these fines impinge upon the state Constitution? That is the question here, and, in our opinion, that question must be answered in the affirmative. It is with judicial reluctance we are constrained to this notion; for the law is a wholesome one. The mischiefs struck at and to be retarded are manifest; the benefits in view and to be advanced, many and salient; and in so far as this holding tends to emasculate the law and defeat its purposes (if so it results) by reducing somewhat the fund for its enforcement, it becomes a matter of pronounced solicitude and gravity. Before any provision of a statute may be declared unconstitutional, the courts should allow full play to all wise rules and maxims of construction and interpretation - inter alia, that its unconstitutionality should be so palpable and obvious as to leave no room for reasonable doubt in the court's mind. (State v. Layton, 160 Mo. l.c. 499.) Another unbending rule is that a state legislature (in contrast to the federal Congress) has all legislative power not prohibited to it by the state or federal Constitution. (State ex rel. v. Sheppard, 192 Mo. 497; Cass County v. Jack, 49 Mo. l.c. 199.) But considering, as we are bound to consider, the

constitutional provision, supra, as imperious, as written by plain men in plain language for a plain and high purpose; and approaching, as our duty is, the legislation in question without judicial austerity or over-refinement of interpretation, we have been able to arrive at no other conclusion than that fines arising from punishment of violators of the act in question, like all other fines arising from punishment inflicted by the criminal law, are devoted to a constitutional purpose of inflexible stiffness, to-wit, the education of the little ones, the children, of Missouri.

From the above it will be observed that the statute, if one were passed by the Legislature, diverting the proceeds of fines on account of violation of the penal laws from the public school fund would be unconstitutional. However, it does not become necessary in the matter before us to rule this statute here considered to be unconstitutional, but on the contrary it is our duty to uphold the constitutionality of same unless there is no reasonable view to take and reach the conclusion that it is constitutional. There is a reasonable view to take in reaching the conclusion that it is constitutional.

In 59 C. J., page 1096, par. 646, the law is thus declared:

"If possible an amendment will be so construed as to uphold its constitutionality rather than to render it unconstitutional,
* * * *"

The Legislature is presumed to know the construction that has been placed by the courts upon the statutes, and it is therefore a fair view to take that the Legislature knew that it would be in violation of the Constitution to divert said fines from the public school fund. The conclusion necessarily follows that when the Legislature wrote into Section 11 of said Senate Bill that all moneys payable under the provisions of that chapter should be deposited into the State treasury to the credit of the Conservation Commission, they did not mean to include therein the moneys collected in fines arising because of violations of the Conservation Commission's laws or regulations. Said Section 11 of said

Honorable A. J. Bolinger

-11-

bill does not appear to violate the Constitution when this construction is placed upon it.

Conclusion.

It is our opinion that moneys collected as fines and penalties for breach of the penal laws of the State, including breach of the laws or regulations under the jurisdiction of the Conservation Commission, are required to be paid into the county school fund of the county in which the conviction is obtained, and it is not the duty of the magistrate before whom such conviction is obtained to transmit said moneys to the Department of Revenue.

Very truly yours,

DRAKE WATSON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

DW:ml