FUNDS: State Treasurer entitled to transfer only that part of Grain Inspection Fund under Sec. 13360, R. S. Mo. 1929, which is in excess of $30,000.

August 17, 1939

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Honorable J. W. Buffington
State Warehouse Commissioner
Jefferson City, Missouri

Dear Mr. Buffington:

We wish to acknowledge your letter of August 14th wherein you state as follows:

> "Section 13360, Missouri Revised Statutes, 1929, provides that all fees and money receipts earned by the Grain Department and paid into the State Treasury monthly are and stand reappropriated as a special fund of the Grain Department, and at the end of each biennium all such funds remaining in the hands of the Treasurer in excess of $30,000 should be transferred to general revenue.
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> "There is a Session Act, Laws 1933, Page 415, relative to the transfer of the funds of numerous departments of the State which receive receipts by way of fees, wherein such session act the balance remaining in such special funds at the end of each biennium is transferred to general revenue.
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> "If the Session Act is held to apply to the Grain Department, then some confusion arises as to just what was intended by the Session Act with relation to the Grain Department's funds.
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> "At the end of the 1937-1938 biennium the Grain Department had to its credit which by

> the statute had been reappropriated to it, the sum of $49,121.46 which the Treasurer proposes to transfer on or about August 20th next to general revenue. My contention is that the Treasurer is entitled to transfer only that part of such fund which is in excess of $30,000.
>
> "Will you kindly give me your opinion on this issue at your very earliest convenience?"

Under date of November 17, 1937, this department rendered an opinion to Honorable Robert W. Winn, State Treasurer, wherein it was held that the Grain Inspection Fund, together with fifty-two other State funds, would at the end of the biennium, assuming all warrants on same had been discharged, be required to transfer and place to the credit of the ordinary revenue fund of the State Treasury the unexpended balances remaining in said funds.

The conclusion above reached was bottomed upon our interpretation of Laws of Missouri, 1933, Section 1, page 415, which provides in part 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."

You state that at the end of the 1937-1938 biennium the Grain Department had to its credit the sum of $49,121.46, which the Treasurer proposes to shortly transfer to the general revenue. Your contention is that the Treasurer is entitled to transfer only that part of such fund which is in excess of $30,000.00, in view of Section 13360, R. S. Mo. 1929, which provides in part that:

> "All fees collected shall be turned into the state treasury, and all fees so turned into the state treasury from the inspection and weighing of grain are hereby re-appropriated to the warehouse commissioner for the purpose of paying all salaries and expenses necessary for inspecting and weighing grain, and paying all other expenses incurred in the administration of the department. * * * Provided, however, that at the end of each biennial period all money remaining in said fund in excess of thirty thousand dollars shall be transferred by the state treasurer into and become a part of the general revenue fund."

It is a well established rule of statutory construction that the primary rule is to determine the intent of the Legislature in enacting a statute (State ex rel. American Asphalt Roof Corp. v. Trimble, 44 S. W. (2d) 1103, 329 Mo. 495), and to give effect to such legislative intent (State ex rel. Lentine v. Board of Health, 65 S. W. (2d) 943, 334 Mo. 220).

In order to arrive at the intent of the Legislature in the passage of the Session Act, we have undertaken an examina-

tion of the statutory provisions applicable to all boards, bureaus, departments, commissions, etc., with respect to the disposition of fees and receipts collected by each of them, and have found that all are required to turn over their respective receipts into the State Treasury, where such fees and receipts are set up as a particular fund to the agency paying in such receipts.

It is obvious, therefore, that the portion of the Session Act from its beginning down to the word "collected" in the eighth line, which provides for payment of fees into the treasury to the credit of each respective fund, is needless and unnecessary to the Act.

Examination further reveals that seven of such agencies are required to pay their respective receipts into the treasury and it is directly credited to the general revenue fund. Here, again, the provision in the Session Act as to transfer of funds to general revenue is needless as to those agencies having such provision prior to the passage of the Session Act.

The remaining agencies, however, save and except the Grain Department, had no provision of any kind for transfer of funds from each agency's special fund to general revenue at the end of the biennium. The Grain Department, under Section 13360, supra, it is to be noted, is required to turn over to the State Treasury all of its receipts which stand reappropriated for operating costs of the department, and at the end of each biennium there stands reappropriated to the department by legislative act any and all of the department's receipts for the biennium remaining in such fund up to and including the amount of $30,000.00, and transfer is provided for to general revenue for any amount remaining in the department's fund in excess of $30,000.00.

It is readily evident, therefore, that the purpose and intent of the lawmakers in enacting the Session Act was to provide for transfer of funds from the special fund to the general revenue fund with respect to those agencies which, up to the time of the enactment of the Session Act, didn't have any provision for such transfer of funds.

The courts have frequently held that statutes should receive a sensible construction, such as will effect the legislative intention, and if possible so as to avoid an unjust or absurd conclusion. State ex rel. Mosely v. Lee, 5 S. W. (2d) 83, 319 Mo. 976.

It is apparent that the Legislature having already made provision for the transfer of the funds of the Grain Department, and what was to be transferred, it certainly couldn't reasonably be said that the Session Act was intended to be applied to said department. The Grain Department is as much an exception to the Session Act as are those State agencies referred to where no provision for transfer of funds was needed at all.

Let us assume, however, for the basis of argument, that some confusion does exist as to the intention of the Legislature by adoption of the Session Act.

It is beyond contradiction that Section 13360 is a special statute applying specially to a particular department of the State with provision as to the disposition of its funds at the end of a biennium, special and pecculiar to itself, and totally unlike the provision of any other State agency. On the other hand, it goes without contradiction that the Session Act is a general law purporting to apply to all boards, bureaus, commissions, etc., of the State government.

In the case of State v. Imhoff, 238 S. W. 122, l. c. 125, the court in discussing when a special act will be held to be excepted from the provisions of a general act on the same subject, said:

> "We have said, not once, but a number of times, that where there are two acts, and the provisions of one have special application to a particular subject and the other is general in its terms, and if standing alone would include the same matter and thus conflict with the special act, then the latter must be construed as excepted out of the provisions of the general act, and hence not affected by the enactment of the latter."

Thus, even assuming that there was confusion between the general and special law, the latter would be construed as an exception, and hence the Grain Department not affected by the Session Act.

Laws of Missouri, 1933, Section 1, page 415, supra, further provides that an exception is made as to gifts, grants, etc., as follows:

> " * * * 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 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."

The argument might be presented that by reason of the above exceptions, the Session Act impliedly repeals the statute. However, it has long been a rule of statutory construction that:

> "Repeals by implication are not favored. It is our duty to harmonize and preserve the whole body of the law, when we can." Decker v. Deimer, 129 S. W. 936.

Furthermore, implied repeal, or repeal by necessary implication doesn't arise merely by reason of conflict between a special and general law. Such rule is illustrated in State v. Imhoff, supra, l. c. 125, as follows:

> "In the absence of any words in the enactment of section 4944 declaratory of a legislative purpose to repeal all former acts prescribing the manner in which propositions other than constitutional amendments are to be submitted to the people, the effect, if any,

> of the adoption of said section upon section 13165 must be by implication; it being necessary that there be present in the later act such declaratory words or some other equally cogent evidence of a purpose on the part of the Legislature to repeal the earlier section in the adoption of the later. Cases illustrative of the rule requiring such words or the presence of such an intention are found in the interpretation of acts prescribing a form of ballot in a particular case in an election for the organization of a village, the establishment of a high school district, or the issuance of bonds of a county, in each of which cases it was held that the acts especially applicable thereto were not repealed by subsequent general laws, which prescribed a form of ballot other than that required by the particular statute."

It is to be noted that the exceptions in the Session Act refer to the fees, funds, and moneys received by any department, board, etc., by virtue of:

> " * * * any law or rule or regulation made in accordance with any law * * *."

The first exception relates to funds controlled by the Constitution, since no legislative act can supersede the Constitution.

The second exception relates to gifts, grants and trust funds. Gifts and grants being voluntary contributions, and not arising by virtue of "any law or rule or regulation made in accordance with any law," it is obvious that this exception was included by the Legislature so that no false construction could be placed upon the Act by anyone who might desire to include gifts, etc., as coming within the terms "funds, and moneys" set forth in the Act. Thus, the Legislature guarded against any such contingency by expressly excluding funds that came to a department by voluntary action and not by law.

Another important rule of statutory construction is illustrated in the case of State v. Fulks, 296 Mo. l. c. 626, wherein the court declares that:

> "'Where there is one statute dealing with a subject in general and comprehensive terms and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy; but to the extent of any necessary repugnancy between them, the special will prevail over the general statute."

It is, therefore, reasonable to conclude that the Legislative intent in the Session Act, if it was intended at all to cover the Grain Department therein, was to apply it to that part of the Grain Department's funds for which transfer had been provided, to-wit, the unexpended balance or remainder of funds in excess of $30,000.00.

To construe the Session Act accordingly is to harmonize it with the statute, which the law declares should be done, if possible. Manifestly, it is not only possible here, but logical, if the first principles in statutory construction are to be adhered to in giving the benefit of the doubt to harmonizing the law rather than repugnancy.

The strongest point that might be presented here as to possible conflict between the Session Act and the statute is that the one or earlier law expressly providing for transfer of the Grain Department's funds in excess of $30,000.00, might be assumed, by reason of the latter, or Session Act, to have been intended by the Legislature to be transferred along with the excess.

The case of State ex rel. Kellog v. Treasurer, 41 Mo. 16, is peculiarly applicable to the situation here. In that case the Legislature by an Act in 1863 created a special fund called the "Union Military Fund," consisting of all the money derived from the United States in connection with the State's

expense arising out of the Civil War. By the Act of 1865 it was provided that such fund be devoted to the above purposes. By the Act of 1867 the Legislature provided that the money received, or to be received from the United States Government should first be devoted to other purposes than the payment of war expenses.

The defendant treasurer elected to stand on the latter Act and declined to pay military bonds, which constituted war expense, on the assumption that the latter Act was in conflict with the former Act, and hence the latter Act prevailed.

In the instant case the Legislature by statute created a special fund called the "Grain Inspection and Weighing Fund" consisting of fees or receipts received from inspecting and weighing grain, and provided that all such fees should be devoted to the expenses of operation, save and except the excess over $30,000.00 remaining in said fund, which excess only was to be transferred to general revenue.

So far as the above outline of facts is concerned, the two cases are closely alike in principle as to facts, and presumably one could take a like position in the instant case as the defendant in the Kellog case, and urge "implied repeal" on the assumption that the Legislature intended by the Session Act to transfer the $30,000.00, whereas the statute reserved it in the Grain Fund.

In the Kellog case, the court considered the defendant's position that all of the fund should be devoted to the school purposes, and the balance left, if any, to military bonds in derogation of the provisions of the earlier act, held to the contrary by harmonizing the two acts and thereby removing the apparent conflict. The court in its holding construed the second Act to mean that the bonds should be first paid in accordance with the former law and that the latter Act dealt only with the excess of the funds remaining.

So in the instant case the two laws can and should be harmonized to the end that the Session Act wasn't intended to deal with the $30,000.00 already made a part of the Grain Fund by statute, or former law, but only with the excess of the funds over and above such amount.

The language of the court as to statutory construction in the Kellog case, supra, is particularly applicable, l. c. 25:

> "The rule of construction which has been laid down on unquestionable authority, as applicable to a case of this kind, is, that 'when the mind of the legislator has been turned to the details of the subject, and he has acted upon it, a subsequent statute in general terms, or touching the subject in a general manner, and not expressly contradicting the original act, shall not be considered as intended to affect the more particular or positive previous provision, unless it is absolutely necessary to give the latter act such a construction in order that its words shall have any meaning at all' - Sedgw. on Stat. & Const. Law, 123. The law does not favor a repeal by implication unless the repugnance be quite plain; and two seemingly repugnant statutes should, if possible, have such construction, that the latter may not be a repeal of the former by implication - Dwar. on Stat. 533."

CONCLUSION

In view of the foregoing, we are of the opinion that the biennium of 1937-1938 having ended, the State Treasurer is entitled to transfer and place to the credit of the ordinary revenue fund only that part of the Grain Inspection Fund, under Section 13360, R. S. Mo. 1929, which is in excess of $30,000.00.

Respectfully submitted

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APPROVED:

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