

ESCHEAT FUND: Appropriation bill not necessary to allow moneys in hands of State Treasurer, to the credit of "escheat fund", to be withdrawn for the purpose of investment.

November 6, 1942

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Mr. John L. Graves
Bond Attorney
State Auditor's Department
Jefferson City, Missouri

Dear Mr. Graves:

The Attorney-General wishes to acknowledge your letter of October 22, in which you ask that a memorandum be prepared by this office on a matter set out in your letter. This request has been referred to me and I deem it advisable to copy same, which, omitting caption and signature, is as follows:

"Governor Donnell has requested the undersigned to investigate the law relative to the question of whether or not it is necessary to have an appropriation act to support the investment of monies in the escheat fund.

"The 61st General Assembly enacted a law appearing in Laws of Missouri 1941 page 366, authorizing the Board of Fund Commissioners to invest all monies paid into the State Treasury under the provisions of Article 1 Chapter 3 Revised Statutes of Missouri, 1939 entitled 'Escheats' in registered bonds of the United States Government and State of Missouri and providing for the disposal of the interest from said investments to the Public School Fund.

"The 61st General Assembly did not make an appropriation for the investment of the Escheat Fund.

"Pursuant to the above statute the State Board of Fund Commissioners, as you recall, has adopted several resolutions authorizing and directing the investment of the escheat fund into United States Defense Bonds Series 'F' and United States Treasury Bonds. The aggregate of the investments made to date from the Escheat Fund amount to the sum of \$300,884.13, and the cash balance in said fund as of this date amounts to the sum of \$28,101.82.

"The purpose of this letter is to obtain your permission to have Mr. Bradley of your office prepare a memorandum opinion on the questions involved for consideration at the November meeting of the State Board of Fund Commissioners."

My understanding of the question involved is whether or not money which is in the hands of the State Treasurer of the State of Missouri can be withdrawn for the purpose of purchasing United States Bonds without an appropriation duly passed by the Legislature of the State of Missouri.

Section 19, of Article X, of the Constitution of the State of Missouri, 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."

As can be noted from this provision of the Constitution, the following words are used:

"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; * * * *"

This brings us to the definition of the term "paid out." Webster's New International Dictionary, Second Edition, defines the word "paid" as, "given or handed over to discharge an obligation." This clearly was the intention of the framers of the Constitution when they made the provision set out above. In our particular case the money to be used for the purchase of the government securities, of course, will be withdrawn from the State Treasury in the usual and customary manner. This withdrawal, however, will not be in the payment or discharge of any obligation on the part of the State, but will be merely a withdrawal for the purpose of purchasing government bonds.

Under Senate Bill 224, set out in the Laws of Missouri for 1941, at page 366, the Board of Fund Commissioners is empowered to invest all moneys paid into the State Treasury under the provisions of Article 1, Chapter 3, R. S. Mo. 1939, that have accumulated in the State Treasury through the escheats statutes. It is further provided that if the said bonds are purchased by the Fund Commissioners that the State Treasurer shall then be the custodian of the bonds purchased and shall deposit all interest received from such bonds into the escheat fund, which interest shall be subject to investment and may be transferred to the public school fund upon the order of the Board of Fund Commissioners. In other words, it appears that the money shall be withdrawn from the State Treasury only for the purpose of purchasing bonds; immediately upon which purchase the bonds are deposited with the State Treasurer as custodian. It does not appear to this Department that a procedure of this kind would be in violation of Section 19, of Article X, of the Constitution of Missouri, since this money is not paid out of the

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Treasury of the State for any obligation but is merely used for the purpose of purchasing United States Treasury Bonds which are immediately deposited with the Treasurer of the State.

Under such circumstances it is the opinion of this Department that it will not be necessary that the Legislature pass an appropriation bill for the purpose of withdrawing such moneys from the escheat fund to purchase Registered Bonds of the United States Government. The State does not relinquish its property or funds but merely invests them.

Respectfully submitted,

JOHN S. PHILLIPS
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

JSP:EG