

DENTAL BOARD: Application of Senate Bill 124 to funds. *Law 33*

September 1, 1933



Dr. Geo. E. Haigh  
Secretary  
Missouri Dental Board  
Jefferson City, Missouri

My Dear Dr. Haigh:

Acknowledgment is herewith made of your request for an opinion of this office respecting Senate Bill # 124, on the three following questions:

1. What will be the disposition of the funds that are in the treasury of the Dental Board when this law goes into effect July 24th?
2. The law reads that all funds are to be placed in the State Treasury at stated intervals. Kindly give me an opinion as to the term stated intervals.
3. The fiscal year of the Dental Board ends September 30th. I should like an opinion as to what effect this law will have on the funds in the State Treasury that is credited to the Dental Board of the biennial period."

Senate Bill # 124, as found at page 414 of the Missouri Laws of 1933, 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 thereof, 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 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."

In considering your first inquiry, I advise that it has been the opinion of this office that this Act is prospective in its operation. There is certainly nothing in the section which could be interpreted as giving it a retrospective operation. There being no manifest intention of retrospective operation, the Act will be operative prospectively only. This is the settled law of this state. Judge Sherwood, in the case of *Leete v. The State Bank of St. Louis*, 115 Mo. 184, reviewed the authorities on the subject and stated as follows on page 195:

"In construing statutes in regard to whether their action is to be prospective or retrospective, all the adjudicated cases and all the text-writers with unbroken uniformity unite in declaring 'that they are to operate prospectively and not otherwise unless the intent that they are to operate in such an unusual way, to-wit, retrospectively, is manifested on the face of the statute in a manner altogether free from ambiguity.' State ex rel. v. Auditor, 41 Mo. 25; State ex rel. v. Ferguson, 62 Mo. 77; Thompson v. Smith, 8 Mo. 723; State ex rel. v. Hays, 52 Mo. 578. In the case last cited the rule is announced by Ewing, J. in words still more emphatic. He says: 'Statutes are not to be construed as having a retrospective effect unless the intention of the legislature is clearly expressed that they shall so operate, and unless the language employed admits of no other construction.' The same rule is stated by Mr. Sedgwick: 'Courts refuse to give statutes a retroactive construction unless the intention is so clear and positive as by no possibility to admit of any other construction.' Construction of Statutory and Constitutional Law, 166, et seq., and cases cited.\* \* \*

The fees collected by the Board prior to July 24, 1933, were collected under the law as existed prior to the enactment of Senate Bill 124. Such fees were collected under the provisions of Section 13573, R. S. Mo. 1929,

"\* \* \* to provide means for carrying out and enforcing the provisions of this chapter (chapter 106),\* \* \*

and under such provisions,

"All expenses and salary provided for in this chapter (106) shall be paid from the fees received by the Board under the provisions of this chapter and no part of said salaries or expenses shall at any time be paid out of any funds in the state treasury.\* \* \*

Accordingly, the Dental Board was and still is self-supporting.

The fees collected prior to July 24th were collected to promote the objects of the Board, free from and unfettered by Legislative Appropriation. To subject such fees to the provisions of Senate Bill 124, would be to place a retrospective construction upon said Act. This should not be done.

From the foregoing, it is the opinion of this office, that the funds on hand on July 24, 1933, are unaffected by the enactment of Senate Bill 124, and can properly be expended by the board under Chapter 106 R. S. Mo. 1929, in meeting the legitimate obligation of the board the same as though Senate Bill 124 had not been enacted, and that on September 30th, your Board should make the reports and pay into the Treasury of the State, any balance of funds collected prior to July 24, 1933, as may remain unexpended on September 30, 1933. It is our further opinion that all fees collected subsequent to July 24, 1933, should be kept in a separate fund by you and paid into the State Treasury to the credit of the Board at stated intervals as provided by Senate Bill 124.

Your second inquiry reads as follows:

"2. The law reads that all funds are to be placed in the State Treasury at stated intervals. Kindly give me an opinion as to the term stated intervals."

This same question was asked of this office by Eugene Fair, President of the State Teachers College at Kirksville, respecting the application of the term to that institution. In reply thereto, Mr. Lamb of this office wrote Mr. Fair in an opinion dated July 13, 1933, as follows:

" \* \* \* The official authorized to receive the moneys affected by the above Bill is required at stated intervals to place such money in the state treasury. As to what is meant by the words 'at stated intervals' or as to who shall say what is to be considered stated intervals, the Bill is silent. We think the words, 'at stated intervals' should be construed as meaning with reasonable promptitude and as to what would be reasonable promptitude might depend somewhat on the amount of the collections of the department or institution of the state required to remit same. However, the State Treasurer being in charge of the State finances, is the one best qualified to

apply this term to the particular institution involved." \* \* \*

It is apparent that the Legislature realized that one rule or one set 'stated interval' would not be conducive to efficiency when applied to all boards, etc., and that the operation of the particular board or institution and the laws governing the fees and income of such institution should all be considered in arriving at the interpretation of the term as applied to such board or institution.

In considering these matters we call attention to portions of Section 13562 R. S. Mo. 1929, reading as follows:

"Sec. 13562. Licenses--fees--license to be displayed, how.--After a person shall have been registered and shall have received a certificate of registration" \* \* \* then upon request of such person and the payment to said board of the sum of one dollar (\$1.00) the applicant shall be entitled to a license," \* \* \* All licenses to practice dentistry, \* \* \* so issued shall expire on the 30th day of November of each year; all persons who practice dentistry or dental surgery \* \* \* shall renew their license on or before the 30th day of November of each year for the year beginning on the 30th day of November of each calendar year." \* \* \*

The forgoing license fees constitute 60% of the income of Board as shown by the annual report of the Board to the Governor. As these licenses are required to be obtained on or before November 30th of each year, this large portion of the Board's income is collected during November and December, and these fees, then collected, must be sufficient to meet the expenses of the board until the next November. It was with knowledge of this situation that the Legislature provided in Section 13574 R. S. Mo. 1929, that the fiscal year of the Board should run from October 1st to September 30th, and that upon September 30th, the funds unexpended should be paid into the general revenue fund of the State. Under Senate Bill 124, any funds unexpended at the end of the biennium are to be transferred to the general revenue fund of the state. Accordingly, unless the stated interval is made to fit the needs of the Board, the Board may find that the income for licenses issued in November, 1934, will be paid into the State Treasury to the credit of the Board prior to December 31, 1934, and on that date, the unexpended balance, which will be a substantial sum, will be transferred to

The General Revenue fund under the provisions of Senate Bill 124. The Board would then be without funds to operate from January 1, 1933 to the following November, for as we have heretofore shown, the Board has no funds upon which to draw except those which it collects. This is true under Senate Bill 124 as well as under the law prior thereto.

As heretofore stated, it has been our opinion that the State Treasurer is the one to determine what 'stated intervals' means in reference to your board, but it might be advisable for you to discuss the forgoing with him so that he may be fully advised when making the decision.

Your third inquiry reads as follows:

"3. The fiscal year of the Dental Board ends September 30th. I should like an opinion as to what effect this law will have on the funds in the State Treasury that is credited to the Dental Board at the biennial period."

In answering your first inquiry, we advised that as to funds collected prior to July 24, 1933, Senate Bill 124 was inoperative. As to such funds, your fiscal year ends September 30, 1933 and upon that date you should remit the unexpended portions of funds collected prior to July 24, 1933, to the State Treasurer and Section 13574 R. S. Mo. 1929. As to funds collected after July 24, 1933, those funds should be kept intact and at the end of the 'stated interval' transmitted to the State Treasurer as provided by Senate Bill 124.

The forgoing is the proper application of the law to your particular Board, as in the opinion of this office, Senate Bill 124 is a general act, applying to all boards, institutions, etc., and prescribes as near a uniform procedure as is possible by means of a general law. Under such circumstances, while the general law (Senate Bill 94) and the special law (Section 13574) are to be construed together so as to give effect to each, if possible, yet

if they are irreconcilably inconsistent in some respect, the later general law prescribing a general, uniform procedure, will take precedence of the earlier special law insofar as they are inconsistent. The two laws are inconsistent in that Section 13574 R. S. No. 1929, requires the unexpended balance of the Board's fund to be transferred to the General Revenue Fund of the State on September 30th of each year, while Senate Bill 124 requires the unexpended balance in the Board's fund to be transferred to the General Revenue Fund on December 31st of each beinnium.

The purpose of Senate Bill 124 was to subject the fees, moneys and funds of the various state boards and institutions to legislative appropriation and to keep a check upon and a record of the receipts and disbursements of those bodies. In 1921 the legislature passed an act, found on page 157 of the Laws of 1921, requiring the Board of Barber Examiners to deposit their funds in the State Treasury and subjecting such funds to legislation appropriation. The Court considered the history of the act, which seems appropriate here, and expressive of the legislative intent leading to the passage of Senate Bill 124. We find this statement at page 458 of Volume 304, Missouri Reports, reporting the case of State ex rel. Kessler v. Hackmann:

"\* \* \*The relators give a history of the legislation relating to the Board of Examiners for Barbers, showing that before the Act of 1921 the moneys collected by the board were not paid into the State Treasury. There was no way to keep track of the money which the board received and disbursed; the reason for having the money paid into the State Treasury was that a check might be kept upon the receipts and disbursements. The relators, no doubt, are correct in that reasoning as to the purpose of the act." \* \* \*

Having determined that Senate Bill 124 is a general law to establish a uniform system for handling the funds of the boards, institutions, etc., of this state, the statement of Judge Hays in the case of State ex rel. v. Koeln, 61 S. W. (2d) 750, is applicable. In this case, two special laws governing payment of delinquent taxes had been enacted by the 57th General Assembly affecting the City of St. Louis only. Another general act, known as Senate Bill 80, had been enacted by the same assembly laying down a general procedure or system for the collection of delinquent taxes all over the state. In determining which of these laws should control the collection of delinquent taxes in the City of St. Louis, the Court stated on page 755, et seq:

"\* \* \*The whole purpose of the many and harmonious rules of statutory construction is said to be to aid in arriving at the intention of the Legislature, as ascertained from the enactment itself, by calling in aid such of the rules as appear to have special application to the particular statute under consideration. In furtherance of such purpose we adopt and apply in this case a rule, or combination of rules, expressed in the following quotation: 'While the rule is that a general affirmative act, or the general provisions of an act, without express words of repeal, ordinarily will not repeal or affect a previous special or local act on the same subject, yet it is not a rule of positive law, but one of construction only; a special act may be impliedly repealed by a general one and the question whether it has been so repealed is always one of legislative intention.' Schott v. Continental Auto Ins. Underwriters, 326 Mo. 92, 31 S. W. (2d) 7; 59 C. J. Chap. 536; 'The special act is not repealed unless a different intent is plainly manifested, or where the two acts are irreconcilably inconsistent or repugnant, or where the general act covers the whole subject matter of the special one' \* \* \* or is clearly intended to establish a uniform rule or system for the whole state.' \* \* \*"

It is accordingly the opinion of this office that any provisions of Chapter 106 R. S. No. 1929, which are irreconcilably inconsistent with Senate Bill 124, are repealed by the latter law insofar as so inconsistent; that all fees, funds and moneys received by the Dental Board subsequent to July 24, 1933 are subject to the provisions of Senate Bill 124; and that the last payment of moneys into the general revenue fund under the provisions of Section 13574 R. S. No. 1929, should be made September 30, 1933, transferring to said fund any balance of funds collected by the board prior to July 24, 1933, and remaining unexpended on September 30, 1933.

Respectfully submitted,

HARRY G. WALTNER, JR.,  
Assistant Attorney General.

APPROVED:

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Attorney General.

HGW:MM