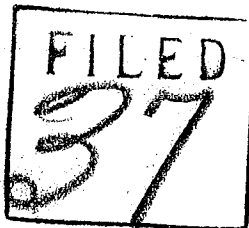


PENITENTIARY: : Money received by the state from the sale of  
TREASURER: : steel beams salvaged from damaged or destroyed  
PUBLIC FUNDS: : buildings within the Missouri penitentiary,  
: should be deposited in the state treasury to  
: the credit of the ordinary revenue fund.  
.....



May 16, 1955

Honorable C. R. Hardy  
Auditor  
Department of Corrections  
Division of Penal Institutions  
Jefferson City, Missouri

Dear Mr. Hardy:

Your letter of March 30, 1955, requested an opinion of this office on the following:

"The Penal Department is now in the process of clearing debris and disposing of the scrap steel which is being salvaged within the walls of the penitentiary. The State Purchasing Agent advertised and sold the scrap to the highest bidder with the provision that all beams and lengthy steel were to be cut into short pieces for shipment, the expense of cutting, which is done by acetylene torch, is to be borne by the Division of Penal Institutions and will approximate some \$2,000.

"The estimate on the amount of steel to be sold is approximately \$6,000 or \$8,000.

"Please give an opinion concerning money received from the sale of the scrap steel and iron as to whether the amount, above the expense of cutting, should be returned to the Department of Revenue or if it may be placed in the penitentiary Fund account and used by the Division of Penal Institutions."

Honorable C. R. Hardy:

The fundamental law of Missouri touching upon original disposition of money received by the state is Section 15, Article IV, Constitution of Missouri, 1945. That section reads:

"All revenue collected and moneys received by the state from any source whatsoever shall go promptly into the state treasury, and all interest, income and returns therefrom shall belong to the state. Immediately on receipt thereof the state treasurer shall deposit all moneys in the state treasury to the credit of the state in banking institutions selected by him and approved by the governor and state auditor, and he shall hold them for the benefit of the respective funds to which they belong and disburse them as provided by law. Such institutions shall give security satisfactory to the governor, state auditor and state treasurer for the safekeeping and payment of the deposits on demand of the state treasurer authorized by warrants of the state auditor. No duty shall be imposed on the state treasurer by law which is not related to the receipt, custody and disbursement of state funds."

It is apparent that money received from sale of property owned by the state should go into the state treasury. The question is to which fund such money belongs.

Section 217.290, RSMo 1949, provides for several funds in connection with the penal institutions. That section reads:

- "1. The state treasurer shall carry on the books of his office as separate accounts the following funds:
- (1) Penitentiary revolving fund;
  - (2) Penitentiary earning fund;
  - (3) Intermediate reformatory revolving fund;
  - (4) Intermediate reformatory earning fund.

"2. All moneys derived from sales of any articles manufactured in any of the industries conducted under this chapter shall be paid into the state treasury and credited to such funds as follows:

"(1) The division shall ascertain and determine on the first of each month from the books, records and accounts kept showing the business operations of the penitentiary or the intermediate reformatory, the amount of money received by each institution each month due to the purchase of raw material for use and manufacture, and said sum when so determined shall be deposited in the revolving fund of the institution which received same;

"(2) The revolving funds of both institutions shall be used only for the purpose of purchasing raw material, machinery or other equipment or in the erection of buildings or making other improvements in plants in connection with the industries carried on or to be carried on in the penitentiary or the intermediate reformatory or on the farms or land mentioned in section 217.130 or elsewhere, and in the manufacturing, handling and marketing of articles so produced, until disposed of, according to the provisions of this chapter, and the money in either such revolving fund shall be paid by the treasurer of the state upon warrants duly issued upon verified vouchers of the division.

"(3) The division shall further determine what part of said receipts are due to labor and other profits in the operation of said penitentiary or intermediate reformatory, and said amount shall be deposited in the earning fund of the institution for which the amount was received.

"(4) The money deposited in either earning fund shall be used by the division for

Honorable C. R. Hardy:

the use of, support and maintenance of the penitentiary or intermediate reformatory respectively and such expenses as come under section 217.270 and the treasurer shall pay same upon warrants drawn on the requisition of the board."

The above statute is not applicable to the instant case because the statute plainly indicates that the funds therein treated are those connected with the operation of the prison industries and farms. The present situation may not properly be considered one of the prison industries contemplated by Section 217.290 even though convict labor may be utilized in salvaging the steel beams.

Section 33.080, RSMo 1949, provides:

"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,

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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 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 above statute is of no benefit in the present situation because the money was not collected for any particular purpose or fund.

There being no other statute which declares this money as being part of any specific fund, we conclude that the money should be placed to the credit of the ordinary revenue fund of the state. This conclusion is based upon the reasoning and holding in an opinion rendered by this office on September 15, 1952, to Honorable M. E. Morris, State Treasurer. A copy of that opinion is enclosed.

#### CONCLUSION

It is, therefore, the opinion of this office that money received by the state from the sale of steel beams

Honorable C. R. Hardy:

salvaged from damaged or destroyed buildings within the Missouri penitentiary, should be deposited in the state treasury to the credit of the ordinary revenue fund.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul McGhee.

Yours very truly,

JOHN M. DALTON  
Attorney General

Enc:

PMcG:irk