WORKMEN'S COMPENSATION: The State Treasurer as Custodian of the Second Injury Fund under the Compensation Act may agree to a settlement and compromise of a claim against said fund, subject to the approval of the Commission, No Appropriation Act is necessary to appropriate the money before a payment is made out of said fund by the Custodian.
SECOND INJURY FUND:

November 21, 1949

12/7/49

FILED
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Honorable M. E. Morris
State Treasurer of Missouri
Jefferson City, Missouri

Dear Mr. Morris:

This will acknowledge your request for an opinion from this department, respecting the right the State Treasurer has, as Custodian of the Second Injury Fund under the Workmen's Compensation Act, to compromise and settle, in agreement with other parties, a claim pending before the Compensation Commission, and, in addition to the exercise of the right to compromise and settle such a claim, whether the State Treasurer may pay out of said fund, upon a warrant issued therefor, any sum, for any purpose, unless the amount of such claim should first be appropriated by the Legislature for such purpose.

Your letter requesting this opinion is as follows:

> "The question has arisen of what authority, if any, the State Treasurer has under Section 3723 of the Workmen's Compensation Act of this state to participate in and effect a compromise settlement with other parties to a claim filed before the Compensation Commission against the Second Injury Fund of the Workmen's Compensation Act of which the State Treasurer is custodian under Section 3707-A, R.S. of Missouri, Laws of Missouri, 1945, pages 1998, 1999 and 2000.
>
> "The question of what authority the State Treasurer as custodian of said fund has to settle a claim against such fund also involves the question of whether such fund should be appropriated by the legislature before the State Treasurer may pay out any of said fund upon a warrant issued therefor.

"Your opinion on the above questions is respectfully requested at your earliest convenience."

The Second Injury Fund amendment first came into the Workmen's Compensation Act as House Bill No. 226, Laws of Missouri, 1943, page 1068, which repealed and re-enacted Section 3707, Chapter 29, R.S. Mo. 1939. The Act of 1943 creating the Second Injury Fund, was itself repealed and re-enacted as Senate Bill No. 248, Laws of Missouri, 1945, page 1996. Section 3707 as so re-enacted, Laws of Missouri, 1945, pages 1998, 1999 and 2000, provides as follows:

"Section 3707. Computation of compensation for disability--payments to the Second Injury Fund.-- (a) All cases of permanent disability where there has been previous disability shall be compensated as herein provided. Compensation shall be computed on the basis of the average annual earnings at the time of the last injury. If the condition resulting from the last injury is a permanent partial disability, there shall be deducted from the resulting condition the previous disability as it exists at the time of the last injury, and the compensation shall be paid for the difference. If the previous disability, and the last injury together result in total and permanent disability, the employer at the time of the last injury shall be liable only for the last injury considered alone and of itself: Provided, that if the compensation for which the employer at the time of last injury is liable, as herein provided, is less than the compensation provided in this act for permanent total disability then in addition to the compensation for which such employer is liable and after the completion of payment of such compensation by such employer, the employee shall be paid the remainder of the compensation that would be due for permanent total disability under Section 3706(a) R.S. Mo. 1939, out of a special fund known as the Second Injury Fund created for such purpose in the following manner:

"Every employer shall pay into the Second Injury Fund hereby created for every fatal injury by accident, on account of which death benefits would

be payable under this act, but sustained by an employee having no dependents as defined by Section 3709, R.S. Mo. 1939, a lump sum of $500, which shall be in addition to the amounts provided for burial and the expenses of the employee's last illness. Every employer in every case of total, permanent loss of the use of, one eye, one foot, one leg, one arm, or one hand, in addition to the compensation as provided for in this act shall pay into the Second Injury Fund provided for herein, the sum of one hundred dollars for the total or permanent loss of the use of any such member; provided, however, that the payments herein fixed at one hundred dollars may on and after the date when payments in such amount become effective, be suspended or reduced as herein provided, but in no event shall such payments be increased to exceed one hundred dollars. Such payments shall be placed in a fund to be known as the Second Injury Fund, which fund is hereby appropriated by the Legislature, in accordance with law, exclusively for the payment of compensation as provided herein. The State Treasurer shall be the custodian of the Second Injury Fund and said fund shall be deposited the same as are state funds and any interest accruing thereon shall be added thereto. Said fund shall be subject to audit the same as state funds and accounts and shall be protected by the general bond given by the State Treasurer.

"The Commission shall direct the distribution of said Second Injury Fund in the manner and amounts provided for in this chapter for the payment of compensation.

"Each January 1st and July 1st, after the effective date of this Act, the Commission shall determine the expenditures to be made from the said Second Injury Fund for the ensuing six months. If, upon such determination made by the Commission there shall be found to be in excess of fifty thousand dollars or more in the said special fund over and above the expenditures to be made therefrom during the ensuing six months, the Commission shall by order posted in its offices, suspend the payments as herein provided or reduce the amount payable to a

sum sufficient to maintain such fifty thousand dollars excess, and such suspension of or change in payments shall be effective with respect to accidental injuries or deaths occurring on or after the date of such order, and for such period as the Commission shall determine.

"In event a payment on account of death is or has been made by an employer under the provision of this section into the Second Injury Fund, and dependence in any degree as in this chapter provided is later proved, the State Treasurer is hereby authorized and directed to refund such deposit upon certification of the Commission of the establishment of such dependency.

"The Commission shall notify the Attorney General of all cases of the total, permanent loss of use of, one eye, one foot, one leg, one arm, or one hand and of all cases of fatal accident in which the employee shall leave surviving no person or persons conclusively presumed to be dependent as in this act provided, which are reported to the Commission, or which shall come to the knowledge of the Commission. Within the limitation period for the filing of claims as provided in this act, the Attorney General may file a claim before the Commission in the name of the Department of Revenue, and against the employer, to recover the payment required by this section or for said purpose may enter the appearance of the Department of Revenue in any pending claim within said time; Provided, that if the Commission or any party to any claim pending before the Commission shall notify the Attorney General that a question of dependency is involved, and the Attorney General shall fail to enter the appearance of the Department of Revenue therein within ten days after being so notified, any award thereafter entered in said claim, or order approving a settlement thereof, shall constitute a bar to any claim in behalf of said Second Injury Fund arising out of said death.

"In all cases in which a recovery against said Second Injury Fund is sought, the State

> Treasurer as custodian thereof shall be named as a party, and shall be entitled to defend against said claim. All awards affecting said Funds and deposits therein shall be subject to the provisions of this chapter governing review and appeal.
>
> "(b) If more than one injury in the same employment causes concurrent temporary disabilities, compensation shall be payable only for the longest and largest paying disability.
>
> "(c) If more than one injury in the same employment causes concurrent and consecutive permanent partial disability, compensation payments for each subsequent disability shall not begin until the end of the compensation period of the prior disability.
>
> "(d) All payments made into the Second Injury Fund shall, for rate making purposes, be considered the payment of compensation."

It will thus plainly appear from the terms of said Section 3707, as amended, that every employer shall pay into the Second Injury Fund for every fatal injury by accident where death benefits would be payable under the Act, except that the fatal accident is sustained by an employee having no dependents as defined by Section 3709, R.S. Mo. 1939, a lump sum of $500.00, in addition to the amounts provided for burial and expenses of the employee's last illness. The section provides that every employer, in case of the total, permanent loss of the use of an eye, a foot, a leg, an arm, or a hand, in addition to the compensation as provided for in the Act, shall pay into the Second Injury Fund the sum of $100.00 for such total or permanent loss of the use of any such member.

Before the enactment of the Second Injury Fund statute compensation, in all cases of total disability arising out of and in the course of the employment by an employee was paid, temporary or for life, as the case might be, by the employer,

under the terms of Section 3606 of Chapter 29. The compensation therein provided for still is, unless there has been previous disability to bring the case within the terms of the Second Injury statute, paid solely by the employer or his insurance carrier. But under the Second Injury statute all employers whose employees suffer any of the casualties defined in sub-section (a) of Section 3707, as amended, regardless of the payment of other compensation, or the rendering of services, in the way of compensation, that must be paid to the employee, and regardless of whether such employees, or any of them, receive any compensation from the Second Injury Fund or not, must pay into the Second Injury Fund the sum fixed by said section for such casualty or death of such employees, as the case may be. The employer may never have any occasion to become directly benefited from such payment in any specific case. His payment is, for the time being, at least, helping only to pay for other employers' compensation to their employees, in cases of total, permanent disability, after the primary payments have been discharged by such employers during the period fixed by the terms of said Section 3606 for the full compliance by the employer with the last named statute. But if the contributing employer to the Second Injury Fund does have a case against the Second Injury Fund by reason of his employee suffering an injury by accident arising out of and in the course of his employment, resulting in total, permanent disability, then the other employers by their contributions of the payment as required of them by said section, to the Second Injury Fund, will, through said fund directly aid and assist the first named employer so that the last period of compensation payments, if for life, for the total, permanent disability of his employee, because paid in part out of the special Second Injury Fund to which he and others have so made payments under the statute will fall to the lot of all contributors alike. It is a system for the establishment and maintenance of, and it does establish and maintain, a fund for the security of totally disabled employees who are under the Act and who are eligible to receive compensation under the Second Injury Fund statute against any eventuality that might render the employer or the insurance carrier unable to pay continuing compensation in such cases of total, permanent disability.

This, then is the Second Injury Fund. It is a special fund, created and to be administered and disbursed for a special purpose.

We must keep in mind that this fund is contributed by private employers as required by Section 3707 from their private funds for their own use and protection and the use

and protection of other employers similarily situated in discharging their several liabilities to such so disabled employees. In no sense, nor in any manner, is the fund or any part thereof a general fund paid to or maintained by any public agency of the State government, or mingled with any public monies whatsoever.

While the Legislature might have selected any other State officer to perform such duties, the section does provide that the State Treasurer shall be the Custodian of the Second Injury Fund, and requires that said fund be deposited by him the same as are State funds and any interest accruing thereon shall be added thereto. The section provides that the fund shall be subject to audit the same as State funds and accounts, and shall be protected by the general bond given by the State Treasurer. There is no provision in the statute defining the fund however, as State funds or public monies. The section then provides that the Compensation Commission shall direct the distribution of the Second Injury Fund in the manner and amounts provided for in the Workmen's Compensation chapter for the payment of compensation.

The section further provides that in the event of payment on account of death is or has been made by an employer under Section 3707 into the Second Injury Fund, and dependency, in any degree, as in Chapter 29 provided, is later proved, the State Treasurer is authorized and directed to refund such deposit upon certification of the Compensation Commission of such dependency.

The last paragraph of sub-section (a) of Section 3707, supra, further provides that in all cases where a recovery against the Second Injury Fund is sought, the State Treasurer, as Custodian thereof, shall be named as a party to such proceedings.

Said sub-section (a) of Section 3707 further provides that, as a party to any claim against the Second Injury Fund, the State Treasurer as Custodian of the fund shall be entitled to defend against such claim, and that any award affecting such fund shall be subject to the provisions of Chapter 29 governing review and appeal. It thus appears from the terms of Section 3707 that the Custodian of the fund as a party to any claim for compensation out of the fund would have, and does have, all of the rights and privileges to appear in, prosecute and defend and appeal, actions on behalf of or

against the fund, as the case may be, in like manner as any other party to any action would have under the Act, or under the code of civil procedure generally. Parties to actions at law have been defined by the text-writers and by the Courts also when the occasion has arisen to appropriately define the term. In the case of City of Springfield vs. Plummer, et al., 89 Mo. App. Rep. 515, our Springfield Court of Appeals had occasion to construe the meaning of the word, in reference to who are necessary parties to an action, with a view to determining when an action is finally adjudicated as to persons who are parties to the suit. The Court, quoting Greenleaf on Evidence, l.c. 531, and by adopting the definition there given of "parties", said:

> "* * * Parties are defined by Professor Greenleaf (1 Greenl. Ev., sec. 535) to be: 'All persons having a right to control the proceedings, to make defense, to produce or examine witnesses, and to appeal from the decision if an appeal lies.'"

These provisions of the different sections, including Section 3707 as amended, of Chapter 29, R.S. Mo. 1939, are conclusive, we believe, in establishing the State Treasurer as Custodian of the Second Injury Fund as a necessary and proper party to any claim whatsoever that may or might be filed on behalf of, or against, the Second Injury Fund. Such provisions so constituting the State Treasurer as a party to any such claim bring him, when made a party to any such claim, within the definition given by Mr. Greenleaf, and quoted by the Court of Appeals, supra.

Section 3724 of the Workmen's Compensaion Act provides that in every case of an accident the employer shall immediately notify the Commission, and the Commission shall forward to the employer and the employee, or his dependents, a form of agreement to pay and accept compensation for the accident as provided in Chapter 29. The section pre-supposes that a settlement of the controversy will be amicably effected between the employer and the employee without the filing of a claim, and if so, the agreement should be executed by the parties and returned to the Commission. If the Commission approves the agreement, an award of compensation shall be made in the case in accordance therewith. But, if there is a dispute on the part of the employer, and he refuses to execute such an agreement to pay compensation, then the Commission shall assist the person who claims to be entitled to compensation in filing his claim.

Sub-section (a) of said Section 3707, supra, being considered with the above recited provisions of said Section 3724 establishes the right of a claimant to file a claim, according to his rights as defined by the Workmen's Compensation Act, against the employer and against the Second Injury Fund. Thus, we have in said Section 3707 the statutory establishment of the Second Injury Fund, and in that section, along with the terms of said Section 3724, the provisions of law defining who, including the State Treasurer, as Custodian of said fund, are the necessary and proper parties to a claim against the employer and the insurer, if any, and the Second Injury Fund.

Section 3723 of Chapter 29 invites, authorizes, and approves the compromise and settlement of claims filed under said chapter. In that behalf said Section 3723 so providing, is, in part, as follows:

> "Compromise settlements--how made--when valid.--Nothing in this chapter shall be construed as preventing the parties to claims hereunder from entering into voluntary agreements in settlement thereof, * * * ."

Sub-section (a) of said Section 3707, declaring that the Second Injury Fund constitutes compensation and that the Commission shall direct the distribution of said Second Injury Fund in the manner and amounts provided in Chapter 29 for the payment of compensation, would bring the matter of the compromise and settlement of a claim filed against the Second Injury Fund strictly within the terms of said Section 3723 and any such claim would thereunder be the subject of compromise and settlement between the parties thereto.

Said Section 3723 expressly provides that the Commission must approve all settlements of any dispute or claim for compensation before such settlement or compromise shall become valid and binding. Said section so stating, is, in part, as follows:

> "* * * nor shall any agreement of settlement or compromise of any dispute or claim for compensation under this chapter be valid until approved by the commission, * * * ."

Our Appellate Courts, both the Supreme Court and Courts of Appeals in numerous cases, in construing Section 3723 of the Act authorizing the compromise and settlement of claims for

compensation have frequently held that no final settlement of a claim under the Compensation Act shall be valid unless approved by the Commission. In the case of Harder vs. Thrift Construction Co., et al., 53 S.W. (2d) 34, the St. Louis Court of Appeals, in construing Section 3333, R.S. Mo. 1929, now our Section 3723 of the Revision of 1939, on this point, l.c. 36, said:

> "We have heretofore mentioned the fact that under the terms of section 3333, R.S. 1929 (Mo. St. Ann. sec. 3333), the settlement agreement of December 3, 1928, had no validity as a final compromise of the claim in view of the fact that it was not approved by the commission. * * * ."

The Supreme Court of Missouri, en banc, considered on certiorari, the case of State ex rel. Wors vs. Hostetter, et al., 124 S.W. (2d) 1072, on the same question. The Court, l.c. 1079, in its opinion quotes Section 3333, R.S. Mo. 1929, and in holding that any compromise and settlement of a claim thereunder must have the approval of the Commission, l.c. 1080, said:

> "* * * Under the express terms of Section 3333 the approval of the Commission is necessary to make the settlement valid. And when so executed and approved there is no reason why it should not be the basis of a claim of res judicata or estoppel by judgment. "

Section 3723, Chapter 29, R.S. Mo.1939, formerly Section 3333, R.S. Mo. 1929, authorizing the compromise and settlement of claims under the Workmen's Compensation Act by providing that "Nothing in this chapter shall be construed as preventing the parties to claims hereunder from entering into voluntary agreements in settlement thereof" and the cases cited hereinabove, and from which excerpts of the opinions in such cases are quoted would, and does, include all compromise settlements in claims filed before the Workmen's Compensation Commission against the Second Injury Fund.

This, we believe, will answer your first question in the affirmative, that the State Treasurer of this State as Custodian of the Second Injury Fund, and as a party to any claim filed against the Second Injury Fund is authorized by the terms of Chapter 29, R.S. Mo. 1939, to participate in and effect, with the other parties to such claim, a compromise and settlement of such claim, for and on behalf of said fund, subject to the approval of the Commission.

This brings us to the consideration of the second question submitted in your letter whether the State Treasurer, as Custodian of the Second Injury Fund, has authority to pay out any of such fund on any claim for compensation, or otherwise, against the Second Injury Fund,or upon any award made by the Commission, or upon a warrant issued by the Commission and directed to the State Treasurer for the payment out of said fund any sum for any purpose authorized by said Chapter 29, including the refund of a payment, where such payment has been made by an employer on account of death, and dependency as provided in this chapter is later proved, unless and until there is an appropriation first made by the Legislature therefor. This question is to be determined by the solution of the further question, whether the Second Injury Fund is private monies or public monies, and after the application thereto of the provisions of the Constitution as construed by the decisions of our Supreme Court distinguishing between private funds which may happen to be placed in the custody of a public officer and public funds in the hands of a public officer, with respect to the necessity for an appropriation of such funds by the Legislature before such public official may pay out any of such funds. If the said Second Injury Fund is public money no part of it may be granted or paid to private individuals, under our State Constitution, for any purpose whatsoever, or under any circumstances. If the fund is public money, before any public official, charged with its safekeeping and lawful expenditure,could pay out or grant any of said funds, upon a warrant or requisition therefor, even for public purposes, an appropriation by the Legislature must be made therefor, and the Comptroller and the State Auditor must make the certificates in relation thereto, required by Section 28, Article IV of the Constitution. On the other hand, if the fund is a private fund in the hands of the State Treasurer as custodian only, such as payments by employers, as is required by Section 3707, as amended, Laws of Missouri, 1945, page 1998, into a special fund for a special purpose, such fund may lawfully be granted and paid by the State Treasurer to private individuals, when approved and directed by the Commission, as compensation or as a refund under the terms of Chapter 29, R.S. Mo. 1939, without an appropriation thereof by the Legislature, and without any action certifying or pre-approving it for payment by the Comptroller and without the State Auditor certifying that the expenditure is within the purpose of any appropriation, or that there is in any appropriation an unencumbered balance sufficient to pay it, under the powers given them and the duties resting upon them, or either, or both of them,

as defined in Sections 22 and 28 of Article IV of the Constitution of Missouri, 1945, and Section 36 and other sections of the Department of Revenue Act, Laws of Missouri, 1945, page 1429, and without any action thereon by the Division of the Budget, or the Director of Revenue, under said Section 22 of Article IV of the Constitution, even though the State Treasurer, as a public official, has been named by said Section 3707, as amended, as the Custodian of such funds, and has the funds in his hands as such Custodian,

We have proceeded in the preparation of this opinion, having due regard for the terms of the Compensation Act itself, upon the ground and belief that the purpose of the Act was, and is, for providing private compensation out of a private special fund for private individuals, and that the effect of the Act is to accomplish the payment of compensation, including payments out of the Second Injury Fund, as private funds to private individuals, and, if the occasion arises, a refund payment under Section 3707 of the Act.

In this position and belief we are supported by the statement in the title of the Workmen's Compensation Act proposing the passage of an Act and expressing the subject of the Act to be a plan providing for compensation to be paid to private individuals from funds of private individuals and we are supported also by the sections in the body of the Act requiring such compensation to be provided by employers, and also by other sections of the Act providing for the percentage of the annual earnings of an injured employee required to be paid as compensation, and other sections in the Act defining and fixing the character and nature of injuries meriting the payment of compensation, and other sections of the Act bearing upon the security of injured employees as individuals by the payment of compensation. These provisions all relate to, and create obligations between, employers and employees, as individuals, under their existing relationship of master and servant, intended to be established under the Act, with respect to the furnishing and paying of compensation by individuals to individuals. The said title of the Workmen's Compensation Act, as proposed when the Act was passed by the Legislature, Laws of Missouri, 1925, page 375, giving notice that the Act proposed the payment of private funds to private individuals as compensation, when merited under the Act is, in part, as follows:

> "AN ACT to provide a system of workmen's compensation; prescribing the manner of

> election and rejection of the act and the effect thereof; defining certain terms used in said act; defining the rights and liabilities of employers and employees electing to accept or reject the act, and of third persons in connection therewith, prescribing the method of payment of compensation to employees injured and disabled as a result of accidents arising out of and in the course of their employment; * * * ."

Section 3691 of the Act, where both employer and employee have elected to accept the provisions of Chapter 29, makes the employer liable for the payment and requires him to pay compensation, irrespective of negligence, to employees for personal injury or death of the employee by accident arising out of and in the course of his employment. The entire Act contained in Chapter 29, of our Revised Statutes treats of and deals with the subject of the payment of compensation under the Act as the payment of private funds to private individuals.

The Constitution itself, the interpretations our Supreme Court has given in its decisions construing the sections of the Constitution, providing for the collection of, and defining what the Constitution means by the words "public money", and distinguishing between the necessity for an appropriation by the Legislature for the expenditure of public money, and the holdings of the Court that, under no circumstances, is it necessary that an appropriation be first had in order for a public official having custody of private funds to pay out such funds, are definite and plain, and are before us as controlling authorities. We shall here cite and quote the applicable sections of the Constitution and quote from a number of such decisions on these questions.

Provisions for collecting, preserving and the distribution of state funds, and the duties andresponsibilities imposed upon public officials who are charged with such funds are defined in sections of the Constitution of this State.

Section 22 of Article IV of the Constitution of Missouri, 1945, creating the Department of Revenue, its personnel and the duties and authority of the department, reads as follows:

> "The department of revenue shall be in charge of a director of revenue, and shall have divisions of collection, budget and comptroller, and other divisions as provided by law. The division of

> collection shall collect all taxes, licenses and fees payable to the state, except that county and township collectors shall collect the state tax on tangible property until otherwise provided by law. The division of the budget and comptroller shall assist the director of revenue in preparing estimates and information concerning receipts and expenditures of all state agencies as required by the governor and general assembly. The comptroller shall be director of the budget, and shall preapprove all claims and accounts and certify them to the state auditor for payment."

Section 15 of Article IV of the Constitution of Missouri, 1945, respecting monies belonging to the State, is, in part, as follows:

> "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. * * * ."

Section 36 of Article III of the Constitution of Missouri, 1945, reads in part, as follows:

> "All revenue collected and money received by the state shall go into the treasury and the general assembly shall have no power to divert the same or to permit the withdrawal of money from the treasury, except in pursuance of appropriations made by law. * * * ."

Section 28 of Article IV of the Constitution of Missouri, 1945, with respect to the withdrawal of public money from the state treasury, fixing limitations on authority to incur obligations and providing for certifications

for the paying out of public money, and the availability of a balance on hand in each case of the paying out of public money to pay public obligations, by the Comptroller and State Auditor, respectively, in part, reads, as follows:

> "No money shall be withdrawn from the state treasury except by warrant drawn in accordance with an appropriation made by law, nor shall any obligation for the payment of money be incurred unless the comptroller certifies it for payment and the state auditor certifies that the expenditure is within the purpose of the appropriation and that there is in the appropriation an unencumbered balance sufficient to pay it. At the time of issuance each such certification shall be entered on the general accounting books as an encumbrance on the appropriation. * * * ."

Section 23 of Article IV of the Constitution of 1945, making mandatory the specifications of an Appropriation Act reads, in part, as follows:

> "* * * Every appropriation law shall distinctly specify the amount and purpose of the appropriation without reference to any other law to fix the amount or purpose."

The above recited and quoted sections of the present Constitution of this State apply and relate only to state revenue, that is, money collected and required by statute to be paid into the State Treasury from taxes, licenses and fees the State has the power to impose upon property and privileges of business subject to taxation by the State.

Referring again to said Section 3707, as amended, Laws of Missouri, 1945, page 1998, supra, we observe that said section states: "The State Treasurer shall be the custodian of the Second Injury Fund and said fund shall be deposited the same as are state funds and any interest accruing thereon shall be added thereto. Said fund shall be subject to audit the same as state funds and accounts and shall be protected by the general bond given by the State Treasurer." There is no provision or statement in said Section 3707 from which it may be implied that said fund shall be considered state money or public funds, and certainly there is no express provision to that effect.

The Supreme Court of this State has said in its decisions what is, and what is not, public money, and, as to public money, what procedure must be followed before it can be paid out. The rule seems to be that revenue and money derived by the State which the State has the right to receive from taxes and other means for State use must go into the State Treasury. The intention of the Legislature must be the guide in determining whether a fund is a State fund, that is to say, State money or not. The most persuasive indication of the intention of the Legislature for money to be public money is the requirement that such funds must be paid into the State Treasury and not that the State Treasurer or any other public official merely is named custodian of such funds, as in this case. The Legislature must give the State Treasurer authority to receive funds as State funds and deposit them in the treasury as State funds before they can become such, and if the Legislature does not so provide, then such funds do not have to be paid into the State Treasury, nor do such funds have to be appropriated by law before they may be paid out, even to individuals. This view has been followed in the Missouri cases where the question has arisen whether certain funds should be paid into the State Treasury, and whether funds already in the State Treasury, must be appropriated by an Appropriation Act before they may be paid out.

The Supreme Court of this State had occasion in the case of State ex rel. vs. Members of Board of Police Commissioners of St. Louis, 340 Mo. 1166, to define "public funds" and to distinguish between that phrase and "private funds". The case was on appeal to the Supreme Court in mandamus from the Circuit Court of the City of St. Louis. The alternative writ was granted by the Circuit Court, and, on final hearing, was made peremptory, and the appeal followed. The subject of the case was a controversy between the St. Louis Police Relief Association and the members of the Board of Police Commissioners of St.Louis, Missouri, to compel the Board to deliver to the relief association certain monies in their possession. The question was, as said by the Court, whether the Police Relief Association was supported wholly or in part by the City or the State, or whether it was supported by private funds derived from private sources. In its decision that the funds in controversy were private funds, and not public funds, and that the association was supported by such funds and not by public funds, and, therefore, such funds were not subject to the necessity of appropriation, and in defining what are public funds, the Court, l.c. 1174 and 1175, said:

"* * * The Police Relief Association is a private corporation organized under the provisions of Section 8978, supra, and is under the control of its own members. If the funds created by Section 8979, supra, for the benefit of such association are public funds within the meaning of Section 46 of Article IV of the Constitution which prohibits the General Assembly from granting or authorizing the making of a grant of public money to a private corporation, then the Police Relief Association, a private corporation, would not be entitled to such funds. Section 8979 which creates the funds in question reads as follows:

"'This fund shall be created in the following manner: All moneys at present remaining in the hands of any unincorporated police relief committee or association; all moneys arising from the sale of unclaimed personal property; all fines assessed against any delinquent officers by the board of police commissioners; all monthly, annual or periodical assessments of members as may be provided for by the rules of said association; all percentages of rewards allowed to member of any police force under the regulation of its department.'

"Are the funds created by this section public funds within the meaning of the constitutional provision which prohibits the granting of public money to a private corporation? We think not. 50 Corpus Juris, page 854, section 40, defines public funds as follows:

"'The term "public funds" means funds belonging to the state or any county or political subdivision of the state; more especially taxes, customs, moneys, etc., raised by operation of some general law, and appropriated by the government to the discharge of its obligations, or for some public or governmental purpose. . .'

"The case of State ex rel. v. Olson, State Treasurer, 43 N.D. 619, 175 N.W. 714, 715, 716, defines public funds thus:

"'The money referred to in said section is money belonging to the state, which has been accumulated in the treasury as public funds,

> which are to be used in carrying on the state government. It means such money as is raised by taxation, or which has accumulated in the treasury by the payment of fees authorized by law to be charged for various purposes.'
>
> "The case of Ayers et al. v. Lawrence et al., 58 N.Y. 192, gives the following definition:
>
> "'"Funds" may mean cash on hand, stocks, etc., and when "public funds" are referred to, taxes, customs, etc., appropriated by the government to the discharge of its obligations, are understood.'"

The consideration of the same question was before the Supreme Court in the case of State ex rel. vs. Stephens, State Treasurer, 136 Mo. 537. In that case money and securities were deposited with the State Treasurer, under a statute, by a bond investment company for the protection of investors dealing with such companies, with the understanding that the funds should be applied to the satisfaction of a prior mortgage on land constituting a part of the security for a note involved, and the question arose whether the money could be so paid by the State Treasurer without a warrant from the State Auditor and an appropriation of the money. The Court in commending the State Treasurer for declining to pay out the money until the controversy over the question of what authority he had as State Treasurer to pay out such fund, and in what manner he must proceed, was defined in an order by the Court, and holding that the State Treasurer had the implied power to make the agreement and to pay the money to discharge the prior mortgage without a guaranty from the State Auditor or an appropriation by the Legislature the Court, l.c. 546, 547, said:

> "It is next insisted that though respondent may hold the money as treasurer, and for the purpose of making the security good, still he can only be required to pay it out in the manner and under the restrictions of the constitution and laws of the state."
>
> "Section 15, article 10, of the constitution requires that, 'all moneys now, or at any time hereafter, in the state treasury belonging to the state shall, immediately on receipt thereof, be deposited by the treasurer to the credit of the state for the benefit of the funds

to which they respectively belong' * * *, and 'shall be disbursed by said treasurer for the purposes of the state, according to law, upon warrants drawn by the state auditor, and not otherwise.' Section 19 of the same article provides that, ' 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.' The statute contains like provisions. R.S. 1889, sec. 8662.

"It is manifest that these provisions only apply to money 'belonging to the state.' The money in question, though it was deposited with the treasurer, was for the specific purpose of making good the security intended for the protection of those dealing with bond investment companies, and was not money belonging to the state within the meaning of the Constitution. The securities, whether in money, bonds, or notes, are held by the treasurer in trust, not for the use or benefit of the state, but for the protection of those who may hold the bonds, certificates or debentures of bond investment companies which are authorized to sell such securities on the partial payment or installment plan.

"Section 4 of the act of April 21, 1893, provides for winding up the affairs of such corporations, and liquidating their debts and distributing their assets in case of a failure to comply with the requirements of the act. This is required to be done by a receiver appointed by the court. No legislative appropriation is made necessary. It is clear that the legislature did not intend that the money or securities deposited should be paid out or returned under the regulation required in paying out the public money. We are of the opinion, therefore, that respondent had the implied power, under the act, to make the agreement and that an appropriation or warrant of the auditor was not necessary."

The Supreme Court had before it in habeas corpus, the case of Ex parte Lucas, 160 Mo. 218. The prisoner was held in custody by the Marshal of Jackson County, Missouri, under an information filed in the Criminal Court charging him with conducting the occupation of a barber without having secured a certificate of authority so to do from the State Board of Barber Examiners, contrary to the provisions of Chapter 78, R.S. Mo. 1899. The petitioner had not been tried, the Court recited, but applied to a Judge of the Supreme Court and obtained a writ of habeas corpus. It seems from the facts of the case that the State Board of Barber Examiners had on hand funds for the administration of its office. The Court recited, l.c. 226 of the opinion, the fourth ground urged by the prisoner for his discharge under the writ, as follows:

> "* * * fourth, that the act provides that the board of examiners shall receive a compensation of three dollars a day and railroad and traveling expenses to be paid out of any money in the hands of the treasurer of the board, and this is asserted to be in conflict with section 43, article 4 of the Constitution, which provides that all money received by the State from any source whatever shall go into the treasury of the State and shall not be drawn out except pursuant to a regular appropriation made by law."

The Court held against the position of the prisoner, saying that the money authorized to be collected by said Board of Barber Examiners was not State revenue but simply funds to make the Board of Examiners self-supporting, and as its grounds for remanding the prisoner to the custody of the Marshal, at the close of the case the Court, l.c. 226, further said:

> "The fourth contention is not well founded for the simple reason that section 43 of article 4, applies only to money provided for and received by the State. The money authorized to be collected under this act is not State revenue, but is simply a provision to make the board of examiners self-supporting."

The case of State ex rel. Thompson, State Treasurer vs. Board of Regents for Northeast Missouri State Teachers'

College, 264 S.W. 698, was before the Supreme Court on an original proceeding in mandamus at the relation of the State Treasurer, L.D. Thompson, to compel the Board of Regents for the college to pay certain money into the State Treasury under the assertion that such funds were public money or State money. The facts briefly stated were, that over a period of many years, in fact, from the beginning of the administration of the college, the Board of Regents had been allowed, without interference or question, to use certain funds, outside of appropriations by the Legislature, derived from charges of certain fees to students for junior high school, extension and other work.

Among other purposes for which the Board of Regents expended part of such funds was for fire insurance protection for the college buildings. Two of the buildings of the college with their contents and the property of the college were destroyed by fire after the insurance was effected. The policies were made payable to the Board. The premiums thereon were paid by the Board out of funds in its hands derived from the sources above named. The insurance companies carrying the insurance paid the losses incurred by reason of the fire in the sum of $110,000.00, and an additional $7,355.33 for damages to other buildings not destroyed. The Board then proceeded to expend a portion of the insurance returns, amounting to over $26,000.00, for necessary repairs to the building not entirely destroyed and in books, to partially replace the library which was destroyed by the fire. The State Treasurer's position was that the said money was State money, and should be paid into the State Treasury as such, and could only be appropriated out and paid by the State Treasurer under appropriations made by law. In holding that there was no statute requiring the money to be paid into the State Treasury, in its decision the Court, l.c. 701, said:

> "In the foregoing discussion of the constitutional provision invoked by relator, we have stated generally that no statute required the payment into the state treasury of the money here in controversy, and that a statutory enactment was a prerequisite to such payment and its receipt and deposit by the treasurer to entitle it, under the Constitution, to be classified as state money. * * * ."

In basing its holding that such funds were not required to be paid into the State Treasury because they were not to be considered and classified under the Constitution

as State money, the Court in defining what is meant by "State money" l.c. 700, said:

> "* * * By revenue, whether its meaning be measured by the general or the legal lexicographer, is meant the current income of the state from whatsoever source derived which is subject to appropriation for public uses. This current income may be derived from various sources, as our numerous statutes attest, but, no matter from what source derived, if required to be paid into the treasury, it becomes revenue or state money; its classification as such being dependent upon specific legislative enactment, or, as aptly put by the respondent, state money means money the state, in its sovereign capacity, is authorized to receive, the source of its authority being the Legislature.* * * ."

The Court concludes the opinion in holding that, because there was no express authority requiring it to be done, such funds were not required to be paid into the State Treasury as State funds, and, therefore, there was no ground upon which an Appropriation Act could be invoked, and in so holding, l.c. 701, said:

> "* * * In the absence of a mandatory requirement to that effect, no duty is devolved upon such boards to thus dispose of these funds. Their duty in the premises, in the presence of that discretion with which the law has clothed them, is to expend such funds for the college, and account for same in the manner required by the plain provisions of the governing statutes."

In the case of State ex rel. vs. Hackman, State Auditor, 282 S.W. 1007, the Supreme Court had occasion to determine whether proceeds from license fees collected by the Highway Department which were paid into the State Treasury were public money, and if so, whether there must be an appropriation before they could be paid out for a printing bill charged and submitted to the State Auditor for a warrant by the relator.

The Constitution and the statutes then in force, the opinion recites, did not authorize the State Highway De-

partment to use and pay out for its support and maintenance and for its expenditures State monies derived from vehicle registration fees, license fees, or taxes upon the right of motor vehicles to use the public streets and highways of the State, where collected by the State and paid into the State Treasury, unless appropriated by statute. In pronouncing such income and money to be State funds, as constituting the character of funds which must be paid out by warrant and appropriation, under the Constitution, the Court, l.c. 1011, said:

> "* * * The money out of which the highway commission is to be maintained is as much public or state revenue as any money coming into the state treasury from any source. Whether it is called motor vehicle registration fees, license fees, or a tax (all of which designations are used in section 44a of article 4 of the Constitution, vide Laws 1921, 1st Ex. Sess. p. 196), or by any other name, it is a tax levied by the state upon the right of motor vehicles to use the public streets and highways of the state. It is not only levied by the state, but is collected by it, and paid directly from the motor vehicle owners into the state treasury (Laws 1921, 1st. Ex. Sess. p. 104, Sec. 28). The state, therefor, is interested in what use is made of revenue from that source. * * * ."

In the opinion the Court defined the phrase "State revenue" by quoting from the Teachers' College case, 264 S.W., l.c. 700, hereinabove cited and quoted in this opinion, where the Court further said, l.c. 1011:

> "The term 'state revenue' was recently defined by the court in banc in State ex rel. Thompson v. Treasurer of Teachers' College, 264 S.W. loc. cit. 700, 305 Mo. 64. In that case the court said:
>
> "'By revenue, whether its meaning be measured by the general or the legal lexicographers, is meant the current income of the state from whatsoever source derived which is subject to appropriation for public uses. This current income may be derived from various sources, as our numerous statutes attest, but, no matter from what source derived, if required

> to be paid into the treasury, it becomes revenue or state money.'
>
> "It thus appears that not only is the fund public revenue or state money, but it is public revenue of a very extraordinary kind, levied, collected, and held by the state for two specific public uses, the major use of which is the payment and retirement of state bonds."

Discussing the necessity under the Constitution for an appropriation before public money may be paid out, and having said in the opinion that the funds sought to be charged with the payment of the printing bill were public funds, and in holding that under the express terms of Section 19, Article X of the Constitution of Missouri then in force that no funds derived from such sources and collected by the Highway Commission could be paid out of the State Treasury without the same being first appropriated by the Legislature, the Court, l.c. 1013, further said:

> "Section 19, Article 10, of the Constitution of Missouri, expressly provides that no money shall be paid out of the state treasury, except in pursuance of an appropriation by law. This section controls, unless modified by a later constitutional provision. It is true that section 44a, supra, does modify it as to the portion of the automobile license tax to be paid upon the principal and interest of said bonds, but that is the only modification, and there is nothing in section 44a which in any manner conflicts with, or prevents the provisions of, section 19, supra, from controlling with reference to all moneys paid out of the state treasury for the support and maintenance of the highway commission. It thus clearly appears that that portion of the license tax which is to be paid out of the state treasury for the expenses of maintaining the highway commission must, under the express provisions of the Constitution (section 19, supra), be first appropriated by act of the Legislature."

These cases considered the precise questions in their construction of statutes and sections of the Constitution of 1875, which are presented here for our consideration under the present Constitution, respecting the status of the Second Injury Fund in the Compensation Act, on the question of the necessity of appropriations for the paying out of public money before it is paid out. These cases must control and direct the holding in this opinion that the Second Injury Fund is not public money, because there is no authority, either constitutional or statutory, defining the Second Injury Fund as public money; that the fund is not required to be deposited or paid into the State Treasury as State money but is private money for a private, specific object and purpose; and is placed in the hands of the State Treasurer as Custodian, apparently for safe-keeping and the convenience of coverage by his official bond and the auditing of the fund in like manner as is public money in his official charge required to be audited, and that the fund is not subject to appropriation before it can be paid out on warrants from the Workmen's Compensation Commission for lawful awards made by the Commission made against such funds, or upon an order for a refund under Section 3707, or a commutation of compensation by the Commission under Section 3736 of the Act.

We note in passing that the amended Second Injury Fund statute, 3707(a), Laws of Missouri, 1945, page 1998, provides that the Second Injury Fund is "appropriated by the Legislature, in accordance with law, exclusively for the payment of compensation as provided herein." We believe that that part of said Section 3707 as amended, so appropriating said fund as therein stated, is both unnecessary and futile. Such an appropriation is unnecessary because the Second Injury Fund is not public money but is, as we have seen, private money, not subject to be paid into the State Treasury as State money, and is, therefore, not subject to being appropriated as a pre-condition to its being paid out. The effort to appropriate the Second Injury Fund in said amendment serves no need and is futile, we believe, because if there were any need for an appropriation of said fund, it would fall far short of meeting the conditions required in an Appropriation Act by the terms of Section 23 of Article IV of the present Constitution of this State, which, to again quote it, reads as follows:

> "Every appropriation law shall distinctly specify the amount and purpose of the appropriation without reference to any other law to fix the amount or purpose."

The attempted appropriation of the fund contained in said amendment is general in its nature. Awards made against the Second Injury Fund by the Workmen's Compensation Commission for second injuries sustained by employees arising out of and in the course of their employment for total permanent disability and orders for refunds or for commutation of compensation for its payment in a lump sum under the chapter would rest, in each case, upon a separate, distinct, individual and personal claim and right to the payment of compensation out of the Second Injury Fund, and each award, or order for a refund, or commutation, in thecase of each claimant would, to comply with the terms of said Section 23, Article IV of the Constitution, have to be made separately from every other claim and award against said fund. So if an appropriation were necessary at all, there would have to be a specific one in each separate case. This, of course, would result in a confused and confusing obstruction to the administration of the Act, and render it practically unenforcible. However, regardless of the application of the terms of said Section 23 of Article IV of the Constitution, we believe it is plain that there are no grounds whatever existing upon which the Second Injury Fund, a purely private fund for private purposes, and not connected in anywise with the expenditure of public money for public purposes, is subject to an Appropriation Act.

The enactment of the amendment, Laws of Missouri, 1945, pages 1998, 1999 and 2000, popularly called the Second Injury Fund statute, is of such recent occurrence that is provisions and terms have not reached our Appellate Courts for construction. However, a case involving every element of the question here being considered as to whether the fund created for the payment of compensation under a Workmen's Compensation Act is public money, and, therefore, required to be appropriated before it can be paid to lawful claimants to the fund, was considered and decided by the Supreme Court of the State of North Dakota in the case of State ex rel. Stearns vs. Olson, State Treasurer, reported, 175 N.W. 714. This case has been heretofore noted in this opinion in citing and quoting from the case of State ex rel. Members of Board of Police Commissioners of St.Louis, 340 Mo. 1166, l.c. 1174, 1175, where our Supreme Court in the St. Louis case defined what is public money with reference to the necessity of an Appropriation Act before it can be paid out.

The North Dakota case was a claim for compensation under their general Compensation Act and is not identified as a statute named a Second Injury Fund statute, such as ours. The North Dakota Workmen's Compensation Act requires a compensation

fund to be maintained, from which is paid all compensation, unlike our Act which requires primary compensation to be paid direct by the employer. But the conditions which existed, the provisions of the Constitution of the State of North Dakota, and the provisions of the statutes, with reference to the payment of claims against a general compensation fund under the Compensation Act in that State, and the fund being in the hands of the State Treasurer of North Dakota as custodian, in like manner as the Second Injury Fund is in the hands of the State Treasurer of this State, as custodian, makes the case similar in fact and in principle on the question we are here considering. The case is in point, in the discussion on the question, and in the holding by that Court that funds paid into the hands of a State official, as custodian for the payment of claims for compensation under a Workmen's Compensation Act, are not public funds and are not subject to an appropriation as is required by the Constitution of that State, the provisions of which are similar to our Constitution, in case of public funds before paying such awards as compensation. The case is well reasoned and is sufficient authority upon which to support our already expressed view that under our Constitution, the Missouri Supreme Court cases on the principle show that the Second Injury Fund is not public money and is, therefore, not subject to appropriation. We cite the North Dakota case particularly because it does decide all of these issues, both there and here considered, in a Workmen's Compensation case, on a statute the same in its object and purpose as our Second Injury Fund statute.

The case arose out of an application by an employee for compensation under an award made by the North Dakota Workmen's Compensation Bureau for benefits due the employee under the Act. The claimant employee demanded payment out of the Workmen's Compensation fund of that State from the State Treasurer, who was custodian of the compensation fund, upon a voucher warrant issued to the employee by the Compensation Bureau. The State Treasurer refused payment on the ground that the fund constituted public money, and that the State Auditing Committee must first audit and the State Auditor certify the claim to the State Treasurer for payment. The employee filed his petition for mandamus to compel the State Treasurer to pay relator the amount of the voucher out of the compensation fund. The North Dakota statute creating the Workmen's Compensation fund contains, among others, the following provisions, l.c. 716:

"* * * Section 6.

"'Every employer subject to this act shall contribute to the North Dakota Workmen's

compensation fund in proportion to the annual expenditure of money by such employer for the service of persons subject to the act.'

"Section 10:

"'The Workmen's Compensation Bureau shall disburse the workmen's compensation fund to such employes of employers as have paid into the said fund the premiums applicable to the classes to which they belong, who have been injured in the course of their employment, wheresoever such injuries have occurred, or to their dependents in case death has ensued,' etc.

* * * * * * *

"Paragraph 3 of the same section provides that--

"The 'state treasurer shall give a separate and additional bond in such amount as may be fixed by the Governor, and with sureties to his approval, conditioned for the faithful performance of his duties as custodian of the workmen's compensation fund.'

"Section 17 provides:

"The bureau 'shall have full power and authority to hear and determine all questions within its jurisdiction, and its decision thereon shall be final.'"

It will be thus observed that, while somewhat different language is used in the several sections quoted, in comparison, the provisions of the Workmen's Compensation Act of North Dakota creating and administering the Workmen's Compensation fund in all respects is very similar to the provisions of our Second Injury Fund amendment. In that State apparently they do not have a Second Injury Fund, separate from the general fund provided for compensation, or, at least at that time, had no such separate fund. But the fund under the North Dakota Act is a special fund from which all payments for compensation are made. The Supreme Court of North Dakota held against the contention of the State Treasurer, holding that the compensation fund was not a public fund and claims were not required to be

audited by the State Auditing Committee or certified by the Auditor before the same could be paid out of such fund, and ordered that the writ of mandamus be issued, directed to the State Treasurer as custodian of the compensation fund, commanding him to pay the claimant the sum named in the voucher warrant issued to him by the Commission. The opinion is not too lengthy, and while we shall not quote all of it, we will quote sufficient thereof to show that the case is applicable here to support this opinion in our view that the State Treasurer of this State as custodian of the Second Injury Fund may pay all lawful claims certified to him by the Workmen's Compensation Commission out of said Second Injury Fund without first having the same appropriated by any act of the Legislature, and without any action thereon by the Comptroller or any other State officer. The opinion in the North Dakota case deciding such points, l.c. 716, 717, is, in part, as follows:

> "* * * It would seem that the act creating the workmen's compensation fund is so very specific and clear upon the issues involved in the application for the writ that a construction of the same in this regard would be superfluous. It is perfectly clear that the workmen's compensation fund is no part of the state fund, and is, in no sense, public money. It is a special fund, accumulated by the collection of annual premiums from employers, the amount of which is determined and fixed by the Workmen's Compensation Bureau for the employment or occupation operated by such employer, and determined further by the classification rules and rates made and published by the bureau. When the fund is accumulated, the state treasury is, by the provisions of the act, made the custodian of it. The Legislature, if it had thought it wise, could have designated the Commissioner of Agriculture and Labor or the Commissioner of Insurance, or other public officer, as custodian of the fund. It might, perhaps, if it deemed it wise, have designated a trust company or responsible banking institution, or any other responsible financial agency within the state as custodian; this upon the grounds that such funds are not public funds, but is a special fund, and in a sense a private fund as contradistinguished from a public fund in the sense that it is collected from

> not all the people of the state by way of taxation, but from certain individuals, corporations, associations, etc., of the state engaged in conducting certain occupations and employments denominated in the act. The purpose of the collection of the same into a special fund is to compensate for a definite length of time, depending on the character of the injury, employes who received injuries while engaged in such employment for employers who have paid the premiums assessed against them into such fund.
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> "The Workmen's Compensation Fund is a special fund, and is not a state fund. Hence the Legislature had the authority to designate such public officials as to it seemed proper, and impose upon them the duty of disbursing such fund in accordance with the provisions of the law, and had authority to prescribe the manner of the disbursement, as by vouchers, warrant, etc. The fund not being a public one, the state auditor would have no authority to draw warrants thereon, unless specifically authorized so to do by the law under the provisions of which the fund is accumulated; the manner of disbursing the fund is specifically provided for in paragraph 1 of section 13 of the act, which is above set forth. The Legislature had authority to provide for the disbursement of the fund in that manner, and the same is neither illegal nor unconstitutional. * * * ."

The facts and principles discussed and determined in the above cited cases, the terms of the Second Injury Fund statute, Section 3707 itself, and the provisions of the Constitution, as applied to the provisions of the Second Injury Fund, require us to say that the Second Injury Fund of the Workmen's Compensation Act is not State money; that the State Treasurer as Custodian of the Second Injury Fund may participate with other parties to a lawful claim against such fund, pending before the Workmen's Compensation Commission, and recommend to and advise the Commission, in the interest of said fund, to make an order for the approval of a compromise and settlement of any such claim; that no appropriation of any sum paid out or to be

paid out for compensation under the Act, generally, or under the provisions of the Second Injury Fund statute, Section 3707, or upon the commutation of any such compensation by the Commission under the provisions of Section 3736 of the Act, or upon any refund necessary under said Section 3707 of said Act, upon the order of the Compensation Commission by the State Treasurer as Custodian of said fund is necessary, nor is it required that the Comptroller of the Department of Revenue or any other State official approve or certify for payment any such amounts or claims, or participate in the payment of sums out of said fund as a condition precedent to the payment thereof or any part thereof by the said custodian, in any way whatsoever.

CONCLUSION.

It is, therefore, the opinion of this department, considering the above cited and quoted authorities,

1) That the State Treasurer of Missouri as Custodian of the Second Injury Fund, as a party to a claim pending before the Workmen's Compensation Commission, is authorized by the terms of Chapter 29, R.S. Mo. 1939, to participate in and effect an agreement with the other parties to such claim for a compromise and settlement of such claim, subject to the approval of the Workmen's Compensation Commission.

2) That because the fund is not public money but is a private fund, no Appropriation Act is necessary or permissible to appropriate any sum paid out, or to be paid out of the Second Injury Fund by the State Treasurer as Custodian of the fund for compensation under the Workmen's Compensation Act, or for any other lawful purpose under the Act, pursuant to the order and requisition of the Workmen's Compensation Commission therefor, nor is it necessary or permissible that the Comptroller of the Department of Revenue, the State Auditor, the Governor, or any other State official approve, set aside, release, or certify for payment any such sum or sums, or that any such officer participate in any steps looking toward the payment thereof, as a condition precedent to the payment thereof or any part thereof out of said Second Injury Fund by said Custodian, in any manner whatsoever.

Respectfully submitted,

APPROVED:

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