

SECURITIES: Credit union to pay examination fees.

September 21, 1933

9-25



Honorable Neal J. Ross
Commissioner of Securities
Secretary of State's Office
Jefferson City, Missouri

Dear Mr. Ross:

We hereby acknowledge your letter of August 23, 1933 whereby you request an opinion from this department. Your request is as follows:

"Sec. 5084 R. S. 1929 places credit unions under the exclusive supervision of the Commissioner of Securities, and requires me to cause annual examinations to be made, as follows: 'Each credit union shall be examined at least annually by the said commissioner of securities or his duly authorized deputy or agent.....The credit union shall pay to the said commissioner of securities the actual cost of the examination herein provided, except that said cost shall not exceed in any case seven dollars per diem for each examiner.'

The statute does not specify that examination fees shall be paid into the state treasury.

The Securities Division does not have sufficient appropriation to pay the salary and expenses of an examiner. There are some 120 credit unions to be examined. The last examination was in April, 1932, and the law is mandatory that we must make annual examinations. The credit unions are scattered all over the state of Missouri, and it will take months to examine all of them.

It is proposed to handle the situation by appointing an examiner to go to each credit union and conduct examination. The examination fee which the credit union will pay to him will not be transmitted to the state treasurer, but will be retained by the examiner as compensation.

Please favor me with your ruling, as to whether this plan can be carried out within the powers of the statutes. Unless such plan can be placed in effect, I do not see just how we are going to be in position to comply with the annual examination requirement of the statute."

Paragraph 1 of your letter is a proper literal exposition of Section 5085 R. S. M. 1929, and for the purpose of this opinion I will not repeat it.

The law provides that the Securities Department is under the office of the Secretary of State, and Section 7724 R. S. Mo. 1929 relating to the powers and duties of the Commissioner of Securities read as follows:

"The term 'commissioner' means supervisor of corporation registration, who shall act under the direction of the Secretary of State. * * *"

Article 15 of chapter 33 dealing with the organization and supervision of Credit Unions in Missouri places the exclusive supervision of said corporations in the hands of the Commissioner of Securities by virtue of Sec. 5084 R. S. Mo. 1929 as quoted above, but even so, the general law as it affects and controls the office of the Secretary of State, also carries its limitations and requisites to the subservient agents under the control of the Secretary of State, and hence the Securities Commissioner must be limited and guided by said general law in his exclusive supervision of Credit Union Corporations.

Under the chapter dealing with the powers and duties of the Secretary of State, Sec. 11379 R. S. Mo. 1929 provides as follows:

"It shall be the duty of the secretary of state, within the first three days of every month, to file with the state auditor a written statement, verified by his affidavit, showing the amount of all fees received by him in the past.

month, for services rendered as now provided by law, other than his annual salary; such statement shall show the amount of each item, from whom received, and for what services; and within the first five days of every month he shall pay into the treasury the aggregate amount of such statement, less the twelfth part of five hundred dollars, and it shall become a part of the general revenue fund of the state. He shall take from the treasurer duplicate receipts therefor, one of which he shall, within said five days, deposit with the state auditor, who shall immediately charge the treasurer with the amount thereof on the books of his office: Provided, that all fees chargeable by law shall be paid in advance; and in case of failure of the secretary of state to collect any fee, he shall be chargeable for the same, in like manner as if the same had been actually paid in advance; and provided further, that no fee shall be charged and collected for affixing the 'great seal' to pardons of convicts in the Missouri penitentiary."

Then too, our Missouri Constitution provides in article 4, section 43 as follows:

"All revenues collected and moneys received by the State from any source whatsoever shall go into the treasury, and the General Assembly shall have no power to divert the same, or to permit money to be drawn from the treasury, except in pursuance to legal appropriations made by law * * * *"

Article 10, Section 19 of the Missouri Constitution provides as follows:

"No moneys shall ever be paid out of the treasury of this state, or any other funds under its management, except in pursuance of an appropriation by law; * * * *." A regular statement and account of receipts and expenditures

of all public money shall be published from time to time."

The question involved in your query is answered when it is determined whether the money paid to the Securities Commissioner for an annual examination is State funds or is private funds. If said money be State funds it must go into the State Treasury, if it be private funds, then your plan could be adopted. In the case of *State v. Board of Regents*, 264 S. W. 689 1. c. 700-305 No. 57 where mandamus was sought to compel the payment of money in the hands of the Board of Regents of a state teachers college into the State Treasury, our Supreme Court en banc said:

"This provision, it will be seen from its terms, which are wisely chosen as a limitation upon power, is restricted to 'revenue collected and money received by the state from any source whatsoever.' 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. With this limitation--and the Constitution itself is but an instrument of limitations--it should be strictly construed." * * * "

Then again in *State v. Bradshaw*, 281 S. W. 946 1. c. 948; 313 No. 334, our Supreme Court en banc, in determining the right of the warehouse Commissioner to certain sums which it was alleged he collected and failed to pay into the treasury of the State, they said:

"The purpose of having the fees collected and paid into the state treasury is apparent. Section 43, article 4, of the Constitution, requires that all revenues collected and 'moneys received by the state from any source whatsoever' shall go into the state treasury and must be paid out on appropriations by the General Assembly. When the charges for inspecting grain are paid to the commissioner, the inspector, his deputy, or assistants, they must be paid, of course, to the state of Missouri. The money must go into the state treasury. This is done so that the proper authorities may keep a check upon all the operations of every department of state. To allow a department of state, which is self-supporting from charges paid for services rendered, to have charge of the money received without accounting to the state in any way, would probably lead to abuses. The requirement that all money shall go into the state treasury, with statements accounting for how it was received, would prevent exorbitant charges which might weigh down the grain trade with undue burdens. From the fact that the money was to be paid into the state treasury and go into the general revenue fund, it does not follow that the state should have any money from that source to appropriate for other purposes. The amount received from that department should be exactly, or approximately, balanced against the expense of the department."

In the case of State v. Hackmann, 304 No. 453, 264 S. W. 366, our Supreme Court said on page 367:

"The language of the Constitution is unequivocal; it requires an appropriation before payment of money received by the state 'from any source whatsoever.' The money collected by the board is received by the state; it goes into the state treasury. To make it

more specific, the requirement that an appropriation by the Legislature will be necessary before money can be paid out of the treasury of the state, it is applied, not only to state funds, but to 'any of the funds under its management.'

It is the opinion of this department that under the provisions of Section 5084 R. S. Mo. 1929 the Commissioner of Securities of the State of Missouri has the power to appoint and deputize an assistant or assistants, whose duties would be to examine and audit the affairs of each Credit Union operating in the State of Missouri; and that said Commissioner is empowered to receive from said corporation an examination fee not to exceed \$7.00 per day for each examiner; but that this money in the Commissioner's hands is State funds, or to say the least, this money is a fund under the management of the State, and the Legislature has provided for the disposition of money coming under the control of the Secretary of State by virtue of Section 11379 above set out, and hence this money must go into the State Treasury. The salary of an assistant appointed to examine Credit Unions can only be paid from money appropriated by the Legislature as provided by law.

Respectfully submitted

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APPROVED:

ROY McKITTRICK
Attorney General