STATE TREASURER) Amounts received from forfeited bonds of retail
LIQUOR BONDS) liquor dealers belong to county public school funds.

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Hon. Robert W. Winn
State Treasurer
Jefferson City, Missouri

Att: Mr. Dyas B. Hulse, Chief Clerk

Dear Sir:

We have received your recent letter which reads as follows:

> "We are in receipt of draft in the amount of $26,000.00, drawn on the account of the Reserve Mutual Casualty Company, signed by Joseph J. McGee, Treasurer.
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> "This check according to your letter of transmittal seems to be in settlement of certain liquor bond suits. We respectfully ask an opinion from your office as to just what fund this draft should be credited to."

The funds in question, as you have outlined, were received from the Reserve Mutual Casualty Company as surety on certain forfeited bonds of retail liquor dealers licensed to sell liquor by the drink, because of violations of the liquor laws by the dealers who were principals in such bonds.

The Supreme Court of Missouri, en banc, in the recent case of State of Missouri v. Wipke, 133 S.W. (2nd) 354, held that the bonds required of retail liquor dealers selling liquor by the drink are forfeiture bonds and that the full amount thereof, that is, $2,000.00, is recoverable as a forfeiture when the liquor laws are

breached by the principal. The court said at l.c. 358:

> "In this case we think the damage recoverable is the face of the bond; it was required and given to secure performance by means of a forfeiture, and for that reason it is an aid to the State in enforcing its laws."

Section 8 of Article XI of the Constitution of Missouri provides that the clear proceeds of all fines, penalties and forfeitures shall be paid into the county public school funds in the several counties. This section reads in part as follows:

> " * * * the clear proceeds of all penalties and forfeitures, and of all fines collected in the several counties for any breach of the penal or military laws of the State, * * * shall belong to and be securely invested and sacredly preserved in the several counties as a county public school fund;* * * ."

Since the Supreme Court has held that such bonds are "required and given to secure performance by means of a forfeiture", and since the Constitution provides that the clear proceeds of all "forfeitures" shall belong to and be securely invested and sacredly preserved "in the several counties as a county public school fund", it appears to definitely follow that the funds in question belong to the school funds of the several counties.

There are several cases which present analogous situations. In Railroad v. Gildersleeve, 165 Mo. App. 370, the defendant had been forbidden by a writ of injunction from engaging in a certain kind of business. The defendant was later cited to show cause why he should not be punished for contempt for violating the terms of the

injunction. After a hearing, he was adjudged in contempt for violating the terms of the injunction, and sentenced to serve fifteen days in jail. From this order sending him to jail, the defendant appealed. For the purpose of obtaining a supersedeas, the defendant executed a recognizance with surety in the amount of $500.00. It was the usual from of bond used in appeals in civil cases providing in substance that if the defendant shall prosecute the appeal with due diligence and shall perform the judgment of the appellate court, then the bond should be void, otherwise to remain in full force and effect. The contempt proceedings were affirmed by the appellate court and the defendant could not be found. The lower court, after a hearing, then entered judgment on the appeal bond against the surety, and from that judgment, the surety appealed. In holding that this latter appeal was civil in nature and not a criminal appeal, and further that the net proceeds of the forfeited appeal or surety bond belonged to the county school fund because of the above mentioned constitutional provision, the court said at l.c. 375:

> "It is to be conceded, too, that the appeal of Gildersleeve (the defendant) from the judgment sentencing him to jail for contempt involved a civil controversy, for such has been expressly decided by the Supreme Court, touching the identical matter. After Gildersleeve prosecuted his appeal here, a preliminary rule in prohibition was issued against this court by the Supreme Court, on the theory that an appeal would not lie from an adjudication of contempt. On considering that matter, the Supreme Court determined that the adjudication for contempt under which Gildersleeve was sentenced to jail was ancillary to the main case in equity for an injunction, and that, therefore, the statute authorizing appeals in civil

> cases obtained to the extent of warranting the appeal of Gildersleeve, the contemnor. * * * * * * * * * * * *
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> "The recognizance was entered into with full knowledge of our constitutional provision touching forfeitures and this provision essentially entered into the obligation as a silent factor. Under the provisions of section 8, article 11 of our Constitution, the clear proceeds of all penalties and forfeitures shall belong to the several counties as a public school fund. The city of St. Louis is to be regarded as a county within this provision and forfeitures therein by whomsoever collected are held in trust for the school fund of such city. (See In re Staed, 116 Mo. 537, 22 S.W. 859; Fiedler v. Bambrick Bros., 162 Mo. App. 528, 142 S.W. 1111.)"

The case of Gross v. Gentry County, 8 S.W. (2nd) 887 (Supreme Court of Missouri, en banc), was a suit brought by a surety on a judgment rendered on a forfeited recognizance. The surety admitted liability and the purpose of the suit was to determine ownership between two counties of the sum of money paid into court by the surety. It appeared that one Gross was charged by indictment in the Circuit Court of Atchison County with a felony. He applied for a change of venue and the case was sent to Gentry County. After the granting of the change of venue, he entered into the recognizance in question in the Circuit Court of Atchison County with the plaintiff herein as surety. Gross failed to appear in the latter court and the question was which county was entitled to the forfeiture. In holding that all proceedings to collect the proceeds of such bonds were civil in nature and were merely suits to enforce the surety's contract with the state, and further that the clear

proceeds of such bond forfeitures belonged to the county public school fund (in one of the counties), the court said at l.c. 890:

> "If an action had been rendered necessary to enforce the payment of the surety's liability, it would not have partaken of the nature of a criminal proceeding, although having its origin in a prosecution for a crime. It would simply have been an action by the state on a forfeited recognizance which did not involve the guilt, innocence, conviction, or acquittal of any person. It would, in short, have been a suit to enforce the surety's contract with the State, executed by the former when the recognizance was entered into. Possessing this characteristic, its determination must rest largely upon the principles of the law applicable to suits on contracts, rather than the laws in regard to criminal prosecutions. The invoking of the latter may be authorized so far as they may throw light on the ownership of the fund, but not as finally determinative of that matter. The fact that the surety admitted his liability and paid the money into court, thus obviating the necessity of an action, does not affect the nature of the proceeding nor clarify the situation in determining the ownership of the forfeited fund. State v. Gross, 306 Mo. 1, 275 S.W. 769; State v. Wilson, 265 Mo. loc. cit. 9, 175 S.W. 603; State v. Streutker (State v. Carroll), 288 Mo. 156, 231 S.W. 565; State v. Hoeffner, 124 Mo. 488, 28 S.W. 1; State v. Heed, 62 Mo. 559.
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> "If it were permissible to reason by analogy from the Constitution and

> statutes prescribing the manner of the disposition of such a fund in a county in which no change of venue has been taken, little difficulty would be encountered in determining that its ownership is in Atchison county. The Constitution (section 8, art. 11) prescribes that the 'clear proceeds of all penalties and forfeitures * * * shall belong to and be securely invested and sacredly preserved in the several counties as a county public school fund.' The 'several counties' referred to must, in reason, mean the counties in which the proceedings were had out of which the funds originated. While suits for the recovery of penalties and forfeitures are required to be brought by the state because the obligation is made to the state, the amounts recovered belong to the counties, and it would involve an unnecessary formality upon their recovery to require them to be paid into the state treasury and subsequently apportioned to the counties."

It appears, therefore, that the proceeds of forfeited surety bonds given to the state belong to the county public school funds because of the constitutional provision. The Constitution provides that all "forfeitures" shall be so disposed of, whether obtained from forfeited surety bonds or otherwise. The Supreme Court, as shown above, has held that the surety bonds of liquor dealers selling liquor by the drink are forfeiture bonds. Therefore, it follows that such proceeds go to the county school funds.

In Gross v. Gentry County, supra, the Supreme Court, en banc, held also that the provisions of Section 8, Article XI of the Missouri Constitution, are self-enforcing. In this connection, the court said at l.c. 889:

> "Incidentally it may be said that, since the adoption of section 5 of article 9 of the Constitution of 1865, which was continued in force in section 8 of article 11 of the Constitution of 1875, the legal necessity of the enactment of statutes directing the disposition of funds arising from fines, penalties, and forfeitures has not existed, except to give formal legislative recognition to the constitutional provision in regard thereto. This provision is affirmative in its nature and direct in its terms; it consists simply in a mandatory declaration as to the disposition that is to be made of the public funds designated, and is self-executing. State ex inf. Barker v. Duncan, 265 Mo. 26, 42, 175 S.W. 940, Ann. Cas. 1916D, 1, and cases; McGrew v. Railroad, 230 Mo. 496, 546, 132 S.W. 1076."

CONCLUSION.

It follows, therefore, that the amounts received by the state from forfeited surety bonds of retail liquor dealers selling liquor by the drink belong to the county public school funds of the counties in which the violations of the liquor laws occurred.

Respectfully submitted,

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APPROVED By:

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