

APPROPRIATIONS: Balance of moneys in various funds of Department of Penal Institutions should  
PENAL INSTITUTIONS: be transferred and credited to ordinary revenue fund at the end of biennium and after all warrants on such fund have been discharged and the appropriation has lapsed.

September 9, 1941

Honorable Loyd I. Miller, Director  
Department of Penal Institutions  
Jefferson City, Missouri



Dear Sir:

This is in reply to yours of recent date wherein you request an opinion from this department on the following statement of facts:

"At the close of 1940 in our appropriation under Operation we obligated ourselves for \$11,822.08 more than was appropriated, although we had a balance as shown by the State Treasurer of cash on hand of \$53,322.91, but, of course, according to law the State Treasurer could not exceed the appropriation.

"We filed deficiency claim with the State Auditor showing that our appropriation was short \$11,822.08 of our expenditures, and naturally expected when the legislature passed the appropriation for deficiency that this amount would be paid out of Revenue or deducted from the amount of our balance with the State Treasurer under Earnings. We had no knowledge of how this was handled until we received draft from the State Treasurer for the deficiency \$11,822.08 showing that it had been paid out of our 1941 Earnings receipts, and in addition to this the State Treasurer notified us that they were transferring the balance that we had in our Earnings at the end of 1940 \$53,322.91, to the State Treasurer's Revenue Account to comply with the statutes.

"The same is true of the Industrial Home for Negro Girls at Tipton with the exception that Tipton had plenty appropriated in Operation Fund, but they were short \$416.12 in actual cash on hand. Up to date this deficiency has not been paid, but it is our understanding that if it is paid it will be paid out of Tipton's 1941 Earnings.

"We contend that the handling of both of these items is in error, and do not see how the State Treasurer can legally pay bills contracted in 1939 and 1940 out of 1941 Earnings."

Since your inquiry pertains to the "Earning Fund" of the Department of Penal Institutions, we refer to Section 9098, Revised Statutes of Missouri, 1939, under which this fund is created, and which is as follows:

"All moneys derived from the sales of any articles manufactured in any of said industries in this article referred to, shall be collected by said board and paid into the treasury of the state to the credit of the following funds: Said board shall ascertain and determine on the first of each month from the books, records and accounts kept showing the business operations of the penitentiary, the amount of money received 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 and said board shall further determine what part of said receipts are due to labor and other profits in the operation of said penitentiary, and said amount shall be deposited in the 'Earning fund;' and it is hereby made the duty of the treasurer of the state to carry on the books of his office as separate

accounts the said 'revolving fund' and said 'earning fund.' Said 'revolving fund' shall not be used in whole or in part for any purpose or purposes other than those named in sections 9095, 9096 and 9097. The money deposited in the 'earning fund' shall be used by the prison board for the use of support and maintenance of said prison, and such expenses as come under section 9052, and the treasurer shall pay same upon the warrant of the state auditor which shall be drawn on the requisition of the board."

This section would seem to prohibit the balances at the end of the biennium from being transferred to the ordinary Revenue Fund because it provides that this fund shall be used only for the purposes named in Sections 9095, 9096 and 9097.

In 1933 the General Assembly enacted a law providing for the deposit of balances in the ordinary Revenue Account. Laws of Missouri, 1933, page 415. This Act provides as follows:

"All fees, funds and moneys from whatsoever source received by any department, board, bureau, commission, institution, official or agency of the state government by virtue of any law or rule or regulation made in accordance with any law, shall, by the official authorized to receive same, and at stated intervals, be placed in the state treasury to the credit of the particular purpose or fund for which collected, and shall be subject to appropriation by the General Assembly for the particular purpose or fund for which collected during the biennium in which collected and appropriated. The unexpended balance remaining in all such funds (except such unexpended balance as may remain in any fund authorized, collected and expended by virtue of the provisions

of the Constitution of this State), shall at the end of the biennium and after all warrants on same have been discharged and the appropriation thereof has lapsed, be transferred and placed to the credit of the ordinary revenue fund of the state by the state treasurer. Any official or other person who shall willfully fail to comply with any of the provisions of this section, and any person who shall willfully violate any provision 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."

In construing laws which are in conflict, the court, in State ex rel. McDowell v. Smith, 67 S. W. (2d) 50, 334 Mo. 653, held that it was the duty of the court to reconcile and harmonize conflicting statutes, if possible. Another rule of construction which would be applicable here is that where two Acts pertaining to the same subject matter are in conflict and cannot be harmonized, then the latter Act would be controlling because enacted at a later date. State ex rel. Greene County v. Gideon, 199 S. W. 948, 273 Mo. 79.

Under the act of 1933, supra, it became the duty of the State Treasurer to transfer any balances which were in the "Revolving Fund" at the end of the biennium after all warrants against same had been discharged and after the appropriation had expired.

From your request, it appears that your expenditures for the last biennium exceeded your appropriation by the sum of \$11,822.08. Your request also indicates that your earnings to this fund were more than sufficient to meet this excess amount of expenditures.

The expenditures of the Tipton School Fund exceeded the receipts for the last biennium by the amount of \$406.12, although the appropriation for that period was sufficient to have met those expenditures had the earnings of that fund been sufficient. This appropriation was drawn on the "Industrial Home for Negro Girls." Laws of Missouri, 1939, page 90. Since there were not sufficient earnings for this fund to pay the expenditures, the shortage resulted. To meet this shortage in the earnings of the fund for the "Industrial Home for Negro Girls" at Fulton, the General Assembly in 1941 passed Section 12 of House Bill 582, which is as follows:

"There is hereby appropriated out of the state treasury, chargeable to Industrial Home for Negro Girls Fund the sum of Four Hundred Sixteen Dollars and Twelve Cents (\$416.12) for the purpose of paying accounts of Industrial Home for Girls for the year 1940, per accounts now on file in the office of the State Auditor."

Also, by Section 16 of the same Bill, the General Assembly passed the following deficiency appropriation:

"There is hereby appropriated out of State Treasury, chargeable to earnings fund, Missouri Penitentiary, the sum of Eleven Thousand Eight Hundred Twenty-two Dollars and Eight Cents (\$11,822.08) for purpose of paying accounts of Missouri Penitentiary for year 1940, per accounts now on file in office of State Auditor."

It will be noted that each of these appropriations is payable from a particular fund of the Penal Institutions.

It was necessary for the General Assembly to enact said Section 16, supra, because the appropriation for the last biennium was not sufficient by the above amount to equal to the expenditures for that period even though the fund had earned more. Regardless of the source of the fund and the amount that may be in it, moneys cannot be expended therefrom without an appropriation.

Under Section 19 of Article X of the Constitution of Missouri, it is provided as follows:

"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; nor unless such payment be made, or a warrant shall have issued therefor, within two years after the passage of such appropriation act; and every such law, making a new appropriation, or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such sum or object. A regular statement and account of the receipts and expenditures of all public money shall be published from time to time."

The appropriation for the last biennium expired at the end of two years after the passage of the Act. At that time, and after all the warrants against these funds had been discharged, the appropriation lapsed, and then it was the duty of the State Treasurer to turn whatever balance there remained in this earnings fund into the ordinary Revenue Fund, as is required by said 1933 law above quoted.

In your letter you contend that the State Treasurer was not authorized to place this balance in the Earnings Fund in the ordinary Revenue Fund, nor is he authorized to pay 1939 and 1940 obligations out of 1941 earnings. We do not find any provision in the Constitution or Statutes which would prohibit such a procedure. However, we do find that by the Act of 1933, supra, the appropriation acts and the foregoing provision of the Constitution, that the Treasurer was required to place this balance in the Earnings Fund in the ordinary Revenue Account, and was directed by the Appropriation Bill to pay the deficiencies of 1941 earnings.

#### CONCLUSION

This department is therefore of the opinion that it was the duty of the State Treasurer to place any balance which remained in the Earnings Fund at the end of the biennium, and after all warrants have been paid, to the credit of the ordinary Revenue Fund, and that under the deficiency appropriation made in 1941, the Treasurer is only authorized to pay such deficiencies out of 1941 earnings.

Respectfully submitted,

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APPROVED:

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