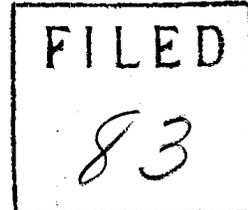


STATE AUDITOR:
ESCHEAT FUND:

Auditor precluded ~~from~~ drawing warrants upon Escheat Fund absent an appropriation by the Legislature creating funds out of which the State Treasurer may pay such warrants.

7/25
July 24, 1941

Honorable Forrest Smith
State Auditor
Jefferson City, Missouri



Dear Sir:

We are in receipt of your request for an official opinion as of July 21, 1941, which request reads as follows:

"The Legislature adjourned without making an appropriation authorizing us to pay out money from the Escheat Fund to claimants after their bills have been properly presented to our office.

"We would like an opinion from your office as to whether I can legally pay any money from the Escheat Fund in the absence of an appropriation duly passed by the Legislature and signed by the Governor.

"Section 19, Article 10, I believe covers this question."

In reply, we call attention to Section 621, R. S. Missouri, 1939, which section reads as follows:

"Within one year after the final settlement of any executor or administrator, assignee, sheriff or receiver, all moneys in his hands unpaid or unclaimed, as provided

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in section 620, shall, upon the order of the court in which such settlement is made, be paid into the state treasury. And the state treasurer shall issue to him a duplicate receipt therefor, one of which shall be filed with the state auditor, who shall credit him with the amount thereof and charge the state treasurer therewith. All such moneys so received into the state treasury shall be credited into a fund, to be known and designated as 'escheats'."

We presume that it was under the force of this section that the moneys referred to in your request were lodged in the office of the state treasurer. We call attention to Section 43, Article 4, Constitution of Missouri, which provides in part as follows:

"All revenue 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 of regular appropriations made by law. All appropriations of money by the successive General Assemblies shall be made in the following order:***"

It might be contended that the aforesaid section of the Constitution has only application to the money procured through revenue. However, it will be noted that in the aforesaid section the words, "moneys received by the State from any source whatsoever," and in reading Section 621, supra, we see that the legislature has set up a plan whereby escheat moneys may be paid into the state treasury and if it were authoritatively ruled by the courts that Section

621 has no application whatsoever to Section 43, Article 4 of the Constitution, then we call attention to Section 19, Article 10 of the Constitution which reads 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 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."

It will be noted that the aforesaid section provides in part 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;*****"

We are of the opinion that the above quoted language would be sufficient to preclude the state auditor from issuing any warrants unless there had first been an appropriation by the legislature for payment of such warrant. See State ex rel. v. Holladay, 64 Mo., p. 526, l.c. 527 where the court had this to say:

"For although the sections of the constitution just cited, do not in express and direct terms inhibit the auditor from drawing his warrant in favor of a claimant who relies

on an appropriation more than two years old, yet those sections, by necessary and inevitable implication, accomplish the same result; for it cannot, with any show of reason, be claimed that a warrant can be drawn without an appropriation; but as just seen, no appropriation possesses any validity, force, or even existence, after the lapse of two years."

It will be further noted that this section contains the words, "--or any of the funds under its management," which wording is broad enough to embody funds received through the force of Section 621, supra.

However, the legislature saw fit to enact Section 13043, R. S. Missouri, 1939, in pursuance to Article 10, Section 19 of the Constitution of Missouri, supra, which reads as follows:

"No warrant shall be drawn by the auditor or paid by the treasurer, unless the money has been previously appropriated by law; nor shall the whole amount drawn for or paid, under any one head, ever exceed the amount appropriated by law for that purpose."

It will be noted that Section 13043, supra, absolutely prohibits the auditor of the State of Missouri from drawing any warrants and precludes the state treasurer from paying any warrant unless money has been previously appropriated by law.

In the case of State ex rel. v. Gordon, 236 Missouri 142, l.c. 157, the court had this to say after setting out in the opinion in verbatim, Section 19, Article 10 and Section 43, Article 4 of the Constitution of Missouri, supra:

"The language of the foregoing provisions of the Constitution is clear and explicit and forbids the payment

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of money from the State treasury 'received from any source whatsoever' or 'of any funds under its management' except in pursuance of regular appropriations made by law. Because of this constitutional inhibition we have no difficulty in deciding that in the absence of an appropriation made by the General Assembly for that purpose no funds could be lawfully paid out of the State treasury*****."

Even though the facts in the Gordon case, supra, were somewhat different from the facts set forth in your request, we think that the language above quoted in the Gordon case is controlling in the situation that you present to us. It will be noted that the court emphasized that moneys coming into the hands of the state treasurer from any source whatever, or any funds under his management should not be paid unless there had first been an appropriation made by the General Assembly for that purpose.

From the reading of Section 19, Article 10 and Section 43, Article 4 of the Constitution of Missouri, and also Section 13043 R. S. Missouri, 1939, we are of the opinion that one could not escape the conclusion that both the statute and the Constitution preclude the state auditor from drawing warrants, on the "Escheat Fund" in the hands of the state treasurer, until the legislature had appropriated a fund of money for the biennium in which said warrant was sought to be drawn, thereby creating a fund out of which the the state treasurer could pay said warrant.

As stated in the request for an opinion, the (Sixty-first) General Assembly failed to make an appropriation providing funds which would enable the state treasurer to pay warrants drawn by the state auditor on the "Escheat Fund".

CONCLUSION

We are of the opinion that due to the fact that the (Sixty-first) General Assembly failed to appropriate funds which would enable the state treasurer to pay warrants drawn by the state auditor upon the "Escheat Fund" to lawful claimants, the state auditor is precluded under the Constitution of Missouri and through the force of Section 13043 R. S. Missouri, 1939, from issuing warrants drawn on the "Escheat Fund" in the hands of the state treasurer until a subsequent legislature appropriates necessary funds for the payment of such warrants.

Respectfully submitted

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APPROVED:

VANE C. THURLO
(Acting) Attorney General

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