

SCHOOLS: When premiums on policies of insurance on buildings of Central Missouri State Teachers College are paid out of the earnings fund reappropriated to the college, insurance money therefrom is to be turned into the state treasury.

Copy to Mr. John

June 2, 1947

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Mr. G. W. Diemer, President
Central Missouri State Teachers College
Warrensburg, Missouri

Dear Sir:

This is in reply to your letter of April 26, 1947, in which you requested an opinion relative to the disposition of certain insurance money. Said letter reads as follows:

"Under date of February 21, I wrote you to know as to the disposition of insurance money that might be collected in case of loss by fire. In case the premiums are paid out of the earnings fund reappropriated to the college by the General Assembly, would insurance money be paid to the Board of Regents or would it go into the General Revenue of the State? I did not at that time ask for a special opinion thinking probably one had been previously written. Mr. O'Keefe sent me an opinion written for the Board of Managers of the Missouri School for the Blind, but in the opinion of our Attorney and Board this opinion does not answer our question. Hence I am writing you to request an opinion from your office. I am doing this under instructions from the Board of Regents of the College inasmuch as we are expanding our insurance program and we want to be certain as to the disposition of insurance money that might be collected as the result of any losses. Any attention you may give this request will be appreciated."

A subsequent letter from you contained the following information:

"Our insurance policies were all taken out by authority of the Board of Regents of the Central Missouri State College. In the policies the Board of Regents is the beneficiary. In each appropriation bill as passed by the General Assembly the College is authorized to use Earnings Funds reappropriated to the College for the payment of insurance premiums. The policy of the Board has been to have fairly adequate coverage on all college buildings and contents including academic buildings, dormitories, and buildings at the College Farm."

State ex rel. Thompson v. Board of Regents of Northeast Missouri Teachers College, 264 S.W. 698, 305 Mo. 57, was a case where the State Treasurer sought by mandamus to compel the regents of one of the state teachers colleges to pay into the state treasury the proceeds of insurance policies on certain of the college buildings which had burned. The policies were payable to the board, and the premiums had been paid out of college funds derived from tuition fees. The court held that the money received by the regents did not have to be paid into the state treasury.

In the Thompson case, supra, the State Treasurer contended that the money received by the board from the insurance companies was, within the meaning of the Constitution and statutes, state money, and should have been paid into the state treasury. Constitutional and statutory provisions were invoked to sustain this contention, the main one of which may be said to constitute a basis for the others, being the constitutional provision that all money collected and received by the state from any source whatsoever shall go into the state treasury, and shall be deposited by the treasurer to the credit of the state for the benefit of the funds to which they respectively belong. (This provision is now to be found in Section 15, Article IV, Constitution of Missouri, 1945.) The court, in referring to this contention, said at l.c. 699:

"* * 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. Thus construed, the spirit which prompted the adoption of the provision is fully recognized and its purpose is promoted. Unless, therefore, it can be successfully contended, in harmony with well-recognized rules of interpretation, that the board of regents of the college is the state, and that moneys received by it other than from appropriations is state money, the constitutional provision will afford no support to the relator's contention."

It is a well-recognized canon of law that funds derived from state funds belong to the state, and must go into the state treasury. Section 36, Article III of the 1945 Missouri Constitution, says:

"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. * * * * *

The duties and powers of the Board of Regents are statutory and can be no larger than is expressly set forth in Article 20, Chapter 72, R.S. Mo. 1939. By such provisions the board has power to sue and be sued, to take, purchase, and hold real estate and to sell and otherwise dispose of same. With all these, the fact remains that the source of creation of this school is the state, and its legal and only dependable source of maintenance is the state without whose appropriations it could not function. We feel that the board is then a subordinate governmental agency with authority to manage and control the school as the state's governmental agent. As such, certain moneys received by the board would be, within the meaning of the constitutional provision above quoted, "money received by the state."

The Thompson case held that money received by the board of regents of that teachers college as payment under the insurance policy for loss by fire was not required to be paid into the state treasury. But it is important to note the factual situation in the Thompson case as it differs from the one you present in your letter. In the Thompson case, the premiums for the insurance policy were paid out of tuition and incidental fees that did not at that time have to be accounted for, and which were not appropriated by the General Assembly to the use of the college. In your case, as is presented in your letter, the premiums on the insurance policies are paid out of the earnings fund reappropriated to the college by the General Assembly. We think this is a very important distinguishing factor between the Thompson case and the case at hand. Because of this, we think for a proper interpretation of the opinion in the Thompson case one must consider it under the premise that it is limited to money received by virtue of insurance on which the premiums were paid out of unappropriated fees; which, at that time, were to be treated as if one of the members of the board had personally, out of his own pocket, paid the premiums on the insurance. We think such a premise is justified by the wording of the court at l.c. 701, where they said:

"Much space is devoted in the lucid brief filed by the respondent to the nonapplications to the matter at issue of numerous other sections of the statutes relating to the management of public institutions and the receipt and disbursement of their

funds from whatever source derived. Without burdening this opinion with their review, it seems sufficient to say that in none of these statutes, either by express enactment or reasonable implication, does it appear that it was within the contemplation or intention of the Legislature that moneys received by the managing boards of educational institutions in the nature of incidental fees should, as a condition precedent to their use by the respective boards, be required to be first paid into the state treasury and appropriated therefrom by the Legislature. 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."

By reading the opinion in the Thompson case, under the premise we have above indicated, we feel that the holding was intended to apply to the facts of that case and not to one as we now have under consideration. The wording of the court, where they speak of the board's proper exercise of its discretion in keeping the insurance money and repairing the destroyed buildings, is properly applicable when the premiums are paid out of such funds as they were in the Thompson case. But it is quite a different thing when the premiums on this insurance policy were paid out of state funds reappropriated to the college by the General Assembly. We think that fact is sufficient to require that this money received from insurance be turned into the state treasury. It cannot be said that in so doing the college has lost the benefit of this insurance money, since Section 9363, R.S. Mo. 1939, provides that certain funds be set up for these state teachers colleges, and moneys paid into the state treasury shall be placed to the credit of the fund to which they respectively belong. This fund is subject to reappropriation by the General Assembly for the improvement of said college.

Mr. G. W. Diemer

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CONCLUSION

Therefore, it is the opinion of this department that, if the premiums on the insurance policies covering certain college buildings of the Central Missouri State Teachers College are paid out of the earnings fund reappropriated to the college by the General Assembly, the money received from such insurance policies must be paid into the state treasury.

Respectfully submitted,

APPROVED:

Wm. C. COCKRILL
Assistant Attorney General

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Attorney General

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