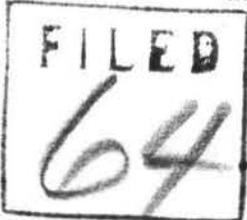


BLIND PENSION FUND:
STATE TREASURER:
TRANSFER:

It is the duty of the state treasurer to transfer to the distributive public school fund that portion of the blind pension fund which remained on hand and unappropriated in his custody at the end of the biennium.

May 21, 1957



Honorable M. E. Morris
State Treasurer
Jefferson City, Missouri

Dear Sir:

Your recent request for an official opinion reads:

"Article 3, Section 38(b) of the Missouri Constitution provides that the balance remaining in the 'Blind Pension Fund' shall be transferred to the 'Distributive School Fund.'

"Section 209.130, R.S.Mo 1949, provides that the balance in the fund be used to pay any pension deficiency which may exist. I presume this may account for the fact that the balance has never been transferred and there is, at this time, a substantial balance in the fund, which has been called to our attention.

"Will you please advise if it is my duty, as State Treasurer, to transfer any or all of this fund, which remained on hand at the end of the biennium and, if so, to what fund."

Article III, Section 38(b) of the Missouri Constitution to which you refer, reads:

"The general assembly shall provide an annual tax of not less than one-half of one cent nor more than three cents on the one hundred dollars valuation of all taxable property to be levied and collected as other taxes, for the purpose of providing a fund to be appropriated and used for the pensioning of the deserving blind as provided by law. Any balance remaining in the fund after the payment of the pensions may be appropriated for the adequate support of the commission for the blind, and any remaining balance shall be transferred to the distributive public school fund."

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Section 209.130, RSMo 1949, to which you also refer, reads:

"There is hereby levied an annual tax of three cents on each one hundred dollars valuation of taxable property in the state of Missouri to provide a fund out of which shall be paid the pensions for the deserving blind as herein provided. The tax shall be collected at the same time and in the same manner and by the same means as other state taxes are now collected. The tax, when so collected, shall be paid into the state treasury to the credit of the blind pension fund, out of which fund shall be paid the pension as herein provided or as may be hereafter from time to time provided by the general assembly. If at the end of any one year there shall be a balance in the pension fund in the treasury after the pensions for such year have been paid, the same shall be available so far as may be needed therefor for the payment of pensions for the succeeding year, and pensions may be paid from such balance on the warrant of the state comptroller as in other cases."

It will be noted that the above section of the Constitution (§ 38(b) of Art. III) holds that any residue of money remaining in the blind pension fund after pensions have been paid and the commission for the blind has been adequately supported, shall be "transferred to the distributive public school fund." It should also be noted that there is no statement as to who will make this transfer or when it will be made. The support for the blind pension fund obviously is by appropriation by the state legislature.

It is the transfer to the distributive public school fund with which we are here concerned, whether by the legislature or by the state treasurer.

Section 38(b) of Article III of the Missouri Constitution, supra, uses, as we noted, the word "transfer." This section uses the word "appropriate" and "appropriated" for acts which clearly are to be done by the legislature.

To find definitions of "appropriate" appears not to be easy. We note the case of State v. Parsons, 69 Pac. 2d 788, which at page 791 reads:

"* * * In Epperson v. Howell, 28 Idaho, 338, at page 343, 154 P. 621, 623, this court defined 'appropriation,' as meant by section 13, article 7, supra, and said: 'An appropriation, within the meaning of the section of our Constitution last above quoted, is authority from the Legislature, expressly

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given in legal form to the proper officers, to pay from the public moneys a specified sum and no more, for a specified purpose and no other. It follows that no money may lawfully be paid from the treasury except pursuant to and in accordance with an act of the Legislature, expressly appropriating it to the specific purpose for which it is paid.* * *"

We also note the following portion of Section 33.080, RSMo 1949, which reads:

"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.* * *"

From the underscored portion of Section 33.080, supra, we see that the word "transferred" does refer to an act by the state treasurer in the instance which is the subject of the above section.

From the above, we believe we are justified in concluding that the word "transfer" does not necessarily refer to an act of the legislature but indeed that it more probably does not so refer.

We also note that Section 15 of Article IV of the Constitution of Missouri makes the state treasurer custodian of all state funds which, as you state in your letter, you are in the matter of the funds here under consideration. It would therefore seem that since the state treasurer is the custodian of this fund and since only he could make the transfer that he would be the person to do so, and that this he would do if Section 38(b) of Article III of the Constitution, supra, is self-enforcing, which we be-

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lieve it to be.

In the case of *State v. Smith*, 194 S.W.2d 302, at l.c. 304 et seq., we find a rather thorough discussion of when a constitutional provision is or is not self-enforcing. That portion of the opinion reads:

"We are of the opinion that the mooted constitutional provision, the text of which is set forth in the margin, is not subject to the foregoing construction. 'One of the recognized rules is that a constitutional provision is not self-executing when it merely lays down general principles, but that it is self-executing if it supplies a sufficient rule by means of which the right which it grants may be enjoyed and protected, or the duty which it imposes may be enforced, without the aid of a legislative enactment. * * * Another way of stating this general, governing principle is that a constitutional provision is self-executing if there is nothing to be done by the legislature to put it in operation. In other words, it must be regarded as self-executing if the nature and extent of the right conferred and the liability imposed are fixed by the Constitution itself, so that they can be determined by an examination and construction of its terms, and there is no language indicating that the subject is referred to the legislature for action.' 11 Am. Jur., Constitutional Law, § 74, pp. 691, 692. See, also, 16 C.J.S., Constitutional Law, § 48, pp. 98-101."

Also, in the case of *State v. Wymore*, 119 S.W.2d 941, at l.c. 947, the court stated:

"* * * The rule is stated in *State ex inf. Norman v. Ellis*, 325 Mo. 154, loc. cit. 160, 28 S.W.2d 363, loc. cit. 365, as follows:

"'It is within the power of those who adopt a constitution to make some of its provisions self-executing, with the object of putting it beyond the power of the legislature to render such provisions nugatory by refusing to pass laws to carry them into effect.* * *

"'Constitutional provisions are self-executing when there is a manifest intention that they should go into immediate effect, and no ancillary legislation is necessary to the enjoyment

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of a right given, or the enforcement of a duty imposed.' * * *

"A constitutional provision designed to remove an existing mischief should never be construed as dependent for its efficacy and operation on the legislative will.' 12 C.J. pp. 729, 730."

Section 38(b) of Article III of the Constitution comes within the purview of the above definitions of a constitutional provision which is "self-enforcing" we believe. Its provisions are specific; it would appear to be the intention of the framers of the Constitution that it have immediate effect; its provisions can be carried out without implementation by an act of the legislature.

In view of the fact that we believe Section 38(b) of Article III of the Constitution is self-enforcing; and of the further fact that we believe the word "transferred," as used in the above section, does not necessarily refer to an act of the legislature but more probably does not so refer; and in view of the final fact that the state treasurer has custody of the fund in question and that only he could make the transfer, we believe that it is his duty to make the transfer to the distributive public school funds under the circumstances set forth by you.

CONCLUSION

It is the opinion of this department that it is the duty of the state treasurer to transfer to the distributive public school fund that portion of the blind pension fund which remained on hand and unappropriated in his custody at the end of the biennium.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Hugh P. Williamson.

Very truly yours,

John M. Dalton
Attorney General

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