

April 5, 1974

OPINION LETTER NO. 159
Answer by letter-Wieler



Honorable James I. Spainhower
State Treasurer
State Capitol Building
Jefferson City, Missouri 65101

Dear Mr. Spainhower:

This is in response to your request for an opinion as to the authority of the State Treasurer to transfer moneys from general revenue to the state road fund without an appropriation by the General Assembly.

This question arises as a result of a lawsuit instituted by the Missouri State Highway Commission against the State Treasurer in the Circuit Court of Cole County. In their petition, the Highway Commission asked the circuit court to direct the Treasurer to credit to the state road fund, from other funds in the treasury which have received interest, all of the interest earned from the state road fund since September 21, 1967. The circuit court agreed with the contentions raised by the Highway Commission and ruled that interest earned from the moneys in the state road fund belong to that fund. The court then stated that, if this ruling were not overturned on appeal, the parties should proceed to an accounting to determine the amounts which should be properly credited to the state road fund and which were deposited by the Treasurer in other funds.

On appeal, the ruling of the circuit court was upheld by the Supreme Court of Missouri, stating:

"The judgment is affirmed and the cause remanded for the accounting prayed in Count II and determination of the amounts due the state road fund heretofore credited by the

Honorable James I. Spainhower

State Treasurer to general revenue." State Highway Commission of Missouri v. Spainhower, 504 S.W.2d 121, 127 (Mo. 1973)

The question then is whether or not the courts have the authority to direct the State Treasurer to transfer these funds in the absence of an appropriation from the General Assembly. In our opinion, they do. Article IV, Section 15 of the Missouri Constitution requires the State Treasurer to hold all moneys for the benefit of the respective funds to which they belong. This constitutional mandate has been placed in the statutes in Section 30.240, RSMo 1969, and Section 33.080, RSMo 1969, which require the State Treasurer to hold all state moneys for the benefit of the respective funds to which they belong and to place moneys in the state treasury to the credit of the particular purpose or fund for which collected.

The Supreme Court in the Spainhower case has determined that interest earned from highway funds must be deposited to that fund. There can be no question of interference with another branch of government by ordering transfer of interest earned from 1967 to the present because said moneys will not be withdrawn from the state treasury. Article IV, Section 28 of the Missouri Constitution, as amended in 1972, requires that "No money shall be withdrawn from the state treasury except by warrant drawn in accordance with an appropriation made by law, . . ." This, of course, is a restriction which not even the courts could circumvent. However, as stated before, the money in this case will not be withdrawn from the state treasury but merely transferred from one account to another.

Both the Circuit Court of Cole County and the Supreme Court of this state have already said that interest moneys earned from the state road fund belong to that fund. It is the duty of the State Treasurer to keep all moneys in their proper funds. Accordingly, we believe that the court has the power to order the State Treasurer to return to the state road fund all of the interest earned from the investment of that fund since September 21, 1967, in accordance with the prayer for relief by the Highway Commission, once the amount of interest is definitely established. An order to this effect from the courts is binding upon the State Treasurer and no legislative action is necessary to complete or provide for such a transfer.

Yours very truly,

JOHN C. DANFORTH
Attorney General