

BOARD OF HEALTH: May not use fees for birth certificate
to pay additional help, but must pay
VITAL STATISTICS: into treasury.

January 23, 1942

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Dr. James Stewart
State Health Commissioner
Jefferson City, Missouri

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Dear Sir:

This will acknowledge receipt of your letter of
January 19, 1942.

You state that the Legislature appropriated to the
State Board of Health, for the Division of Vital Statis-
tics for the biennium of 1942-42, the sum of \$74,160.00
(Laws 1941, p. 216); that, due to demands arising from
those who are seeking employment in National Defense work,
there has been a large increase of requests for birth cer-
tificates; that during 1941 there was 134,617 birth cer-
tificates issued for which \$169,489.00 in fees was collected
and turned into the treasury. You advise that the demand
for such certificates is increasing daily and that the pre-
sent staff cannot keep pace with the demand and that there
is not sufficient money remaining in the appropriation to
increase or enlarge the working force.

Upon these circumstances you ask if the fees collected
may be diverted from the treasury and be used to employ
more help in the Vital Statistics Division.

Our answer is no.

The reasons being as follows: Section 9775, R. S.
Missouri, 1939, provides for a fee of \$2.50 for furnishing
birth certificates to persons born in this state before the
effective date of the first vital statistics law (Laws 1909,
p. 536, effective August 16, 1909) or to persons, residents
of Missouri, but born outside of the State before August 16,
1909. Section 9781, R. S. Missouri, 1939, provides for a

fee of \$0.50 for furnishing death and birth certificates and a fee of \$0.50 per hour, or fraction thereof, for making a search of the records where no certificate is made. These are all the fees the State Registrar is authorized to collect.

Section 9871 provides:

"* * * the State Registrar shall keep a true and correct account of all fees by him received under these provisions, and turn the same over to the State Treasurer. * * * * *"

This requirement, by the use of the words "these provisions," has reference to the whole of Article II, Chapter 57, R. S. Missouri, 1939, and is a legislative requirement that all fees collected by the State Registrar be turned into the treasury. Not only is this true, by virtue of the statute, but also by virtue of Section 43, Article IV of the Constitution, which provides:

"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, * * * * *"
(Underscoring ours)

In State v. Bradshaw, 281 S. W. 946 (Mo. Sup. in Banc, 1926), the statute required the fees collected for grain inspectors be paid into the treasury. The court said, l. c. 948:

"The purpose of having the fees collected and paid into the state treasury is apparent. Section 43, article 4, of the Constitution, requires that all revenues collected and 'moneys received by the state from any source whatsoever'

shall go into the state treasury and must be paid out on appropriations by the General Assembly. When the charges for inspecting grain are paid to the commissioner, the inspector, his deputy, or assistants, they must be paid, of course, to the state of Missouri. The money must go into the state treasury. This is done so that the proper authorities may keep a check upon all the operations of every department of state. To allow a department of state, which is self-supporting from charges paid for services rendered, to have charge of the money received without accounting to the state in any way would probably lead to abuses. * * * * *

In State ex rel. Curators of Mo. Univ. v. Walker, 240 Mo. 708, in banc (1912), the court, in speaking of the above constitutional provision, said at l. c. 723:

"* * * The language is ample to cover not only all revenue derived from general taxation, but moneys collected by authority of the State from any source whatsoever; * * * * *"

There is no distinction between the fees in question and those for the inspection of grain and, without doubt, fees for birth certificates are "moneys collected by authority of the State."

There is some authority to the contrary as to the meaning of the constitutional provision above quoted, Ex parte Lucas, 160 Mo. 218 (1901); State ex rel. Thompson v. Board of Regents, 264 S. W. 698 (1924), but in view of the statute and the application of the Constitution in the last controlling case by the Supreme Court of Missouri, in Banc in 1926, there is no question but what these fees for birth certificates

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must be paid into the State Treasury. In the face of the legislative mandate to the State Registrar to pay these fees into the treasury, and the Constitutional mandate to the General Assembly not to divert such moneys from the Treasury, there can be no doubt that, no matter what hardships it may entail, the registrar cannot use any of the fees collected for hiring more help.

Respectfully submitted,

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APPROVED:

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LLB/rv