

WAGES, (STATE EMPLOYEES) - Writ of sequestration, under
H. B. 167, should be served on
State Treasurer.

July 29, 1943



Ira A. Jones, President
Board of Managers
State Eleemosynary Institutions
Jefferson City, Missouri

Dear Sir:

Your opinion request of July 26, 1943, has been referred to the writer for answer. Therein you ask:

"We notice that at this last Legislature a bill was passed permitting the garnishment of wages of State employees.

"Who is the person representing the State to be garnisheed, if a case is brought under this law? In our opinion it is possibly the State Treasurer. We want to be sure before some cases come up."

In answer to your inquiry it might be well to point out that House Bill No. 167 provides for the issuance of a writ of sequestration, as distinguished from garnishment proceedings.

Your specific question is, upon which state officer will this writ of sequestration be served?

From discussion with the author of this bill, and by a reading of House Bill No. 167, it is indicated that said House Bill was intended to be broad enough to allow the writ to be served upon anyone "charged with the duty of payment or audit of such salary, etc." There are two points which need to be discussed under that clause. First, the only officer of the State of Missouri authorized to pay state moneys out in settlement of wages, salaries,

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and so on, is the State Treasurer. Secondly, the service of the writ of sequestration upon the auditing officer of the State would be a mere nullity for that officer, the State Auditor, has no authority to disburse state moneys, but can only issue warrants against which the Treasurer can then issue a check or draft, or pay same in cash. The service of the writ on the State Auditor would be an empty act, because the State Auditor does not have any moneys belonging to the State that can be disbursed by his office. Also, the service of the writ on the head of a department, for example the Attorney-General, to sequester the wages of an employee would be useless, because said employees are paid by warrant and that warrant must (legally) then be honored by the State treasurer either by cash, draft or check. Therefore, the service of the writ of sequestration on the head of a department of the State would be a nullity because said department head has no money which he can disburse.

The Missouri Constitution, Article X, Section 15, provides as follows:

"Section 15. Deposit of State funds by treasurer--how disbursed.--All moneys now, or at any time hereafter, in the State treasury, belonging to the State, shall, immediately on receipt thereof, be deposited by the Treasurer to the credit of the State for the benefit of the funds to which they respectively belong, in such bank or banks as he may, from time to time, with the approval of the Governor and Attorney General, select, the said bank or banks giving security, satisfactory to the Governor and Attorney General for the safekeeping and payment of such deposit, when demanded by the State Treasurer on his check--such bank to pay a bonus for the use of such deposits not less than the bonus paid by other banks for similar deposits; and the same, together with such interest and profits as may accrue thereon, shall be disbursed by said Treasurer for the purposes of the State, according to law, upon warrants drawn by the State Auditor, and not otherwise."

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The above quotation plainly shows that only the State Treasurer can disburse state moneys.

The method of obtaining moneys belonging to the State is provided for by the Constitutional provision quoted above, and this method is not to be infringed or evaded by a statutory enactment. To argue that the writ of sequestration does not attempt to reach state moneys is to argue that it has no effect at all, for what result or what value could be had by service of the writ on any state officer other than the State Treasurer, who alone has the authority to disburse State moneys.

CONCLUSION

It is the opinion of this office that the State Treasurer is the proper State officer upon whom the writ of sequestration, which is authorized under H. B. 167, should be served.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

ROY MCKITTRICK
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