

FUND COMMISSION: May not invest escheated funds in government bonds until escheat becomes absolute
ESCHEAT: and money is paid into public school fund
BOARD OF EDUCATION: and then it is duty of board of education to direct such investment.

June 21, 1944

Honorable Forrest Smith
State Auditor
Jefferson City, Missouri



Dear Sir:

Your letter of June 14th, 1944, is as follows:

"At a special meeting of the Board of Fund Commissioners of the State of Missouri on May 23, 1944, Gov. Forrest C. Donnell requested that we obtain an opinion from your office regarding the following questions:

"1. Does the Board of Fund Commissioners have authority to invest in Government Bonds, moneys paid into the Escheat Fund under the provisions of Article 1, Chapter 3, R. S. No. 1939?

"2. Does the Board of Fund Commissioners have authority to invest in Government Bonds, impounded insurance funds paid into the Escheat Fund March 23, 1944 and designated 16-2/3% State Case Fire Insurance Refund Section 5985A, Laws of Missouri 41, page 396?"

I

In Laws of Missouri 1941, at page 366, Article 1, Chapter 3, R. S. No. 1939, relating to escheats, was amended. Section 642a of the 1941 amendment provides:

"The State Board of Fund Commissioners shall invest all moneys paid into the State Treasury under the provisions of

Article I, Chapter 3, Revised Statutes of Missouri, 1939, that have accumulated, or may hereafter accumulate, in the State Treasury in registered United States Government and State of Missouri bonds, at not less than par value, and shall at all times keep said Fund so invested, provided that said board shall keep in the State Treasury in cash the amount appropriated by the General Assembly each biennium to pay claims duly approved under the provisions of Sections 623 and 624 of Article I, Chapter 3, Revised Statutes of Missouri, 1939."

This section is very clear and definite in meaning, and unless it appears that the Constitution prohibits the General Assembly from providing for the investment of escheat funds in government bonds, the first question presented must be answered in the affirmative.

Section 43, Article IV, of the Missouri Constitution, 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, or to permit money to be drawn from the treasury, except in pursuance of regular appropriations made by law. * * * * *"

Section 19, Article X, of the Missouri Constitution, also provides:

"No moneys shall ever be paid out of the treasury of this State, or any of the funds under its management, except in pursuance of an appropriation by law; * * * * *"

In Lawson v. Baker, 220 S. W. 260, 268 (Tex.) a similar constitutional provision was under discussion, and the court observed:

"Whatever may be the precise meaning of the prohibition in the Constitution that no money shall be drawn from the treasury but in pursuance of specific appropriations made by law, it would seem not to admit of serious argument that it will be effective to prohibit the Legislature, or any officer under its direction, from lending or investing state funds, except as authorized in the Constitution."

It is difficult to see how this meaning was given to such a restriction on the withdrawal of money from the treasury, unless it be considered that all such withdrawals by appropriation had to be for the purpose of paying obligations of the State. Such meaning can logically be given the Missouri provisions when read in connection with Section 15, Article X of the Constitution which directs how money in the treasury may be invested. This latter provision, by covering the entire subject of withdrawals from the treasury for investment, of necessity leaves Section 43, Article IV and Section 19, Article X, as only authorizing withdrawals by appropriations for the purpose of paying obligations. The three sections, when considered together, clearly make Section 642a, supra, invalid. Section 15, Article X of the Missouri Constitution provides:

"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."

This section specifically provides how money in the treasury shall be invested, and is exclusive since it covers "all moneys * * * in the State treasury." To put part of the money in the treasury in government bonds is certainly not depositing it in banks as directed. This deposit was clearly considered as a form of investment for it is expressly provided that such banks are "to pay a bonus for the use of such deposits not less than the bonus paid by other banks for similar deposits."

It therefore appears that the Constitution prescribes the only way funds in the treasury may be invested, and that being so, a statute of the General Assembly directing otherwise would be invalid.

We are fortified in this conclusion by the provisions of Sections 6 and 9 of Article XI of the Missouri Constitution. Section 6 defines what shall constitute the public school fund, and then expressly provides that said fund shall be "securely invested and sacredly preserved." Section 9 then provides the form of investment, as follows:

"No part of the public school fund of the State shall ever be invested in the stock or bonds or other obligations of any other State, or of any county, city, town or corporation; and the proceeds of the sales of any lands or other property which now belong or may hereafter belong to said school fund shall be invested in the bonds of the State of Missouri, or of the United States."

This fund is also under the control of the treasury and therefore we see that the authors of the Constitution of 1875 considered it necessary to expressly provide for the investment of the school fund in government bonds. The

obvious reason that made this necessary was the fact that Section 15, Article X, supra, directed that all money in the treasury should be invested in banks.

CONCLUSION

It, therefore, is our opinion that the funds arising under Article 1, Chapter 3, R. S. Mo. 1939, relating to escheats, may not be invested in government bonds, as directed by Section 642a, Laws of Missouri 1941, because contrary to the constitutional direction for the investment of all funds in the treasury as contained in Section 15, Article X.

II

Section 5985a, Laws of 1941, page 397, provides that certain insurance premiums impounded with the Superintendent of Insurance pending review of rate orders shall, upon final termination of the review be returned to the persons or companies entitled thereto; that, if after diligent attempts have been made to return said money there remains any not returned because the owner is unknown:

"* * * said money shall escheat and vest in the State of Missouri, and it shall be the duty of said Superintendent of Insurance to pay the same to the State Treasurer * * * and such money shall be credited to a fund to be designated as 'escheat' * * * *"

where it is to be held for five years during which persons having claims thereto may establish the same and be paid. Thereafter, said money:

"* * * after remaining therein unclaimed for five years shall escheat and vest absolutely in the State, and all persons or corporations shall be forever barred and precluded from setting up title or claim to any of said funds, and the same shall be on the order of the Board of Funds Commissioners transferred to the general revenue fund of the State * * *"

It is clear that the funds dealt with in this section are those resulting from impoundments growing out of insurance rate increases and decreases under Article 8, Chapter 37, R. S. Mo. 1939.

Section 642a, Laws of 1941, page 366, aside from the fact that it is invalid, cannot be taken as authority to invest these funds in government bonds, because by its own terms it only applies to funds arising under Article 1, Chapter 3, R. S. Mo. 1939, while these escheated insurance funds arose under Article 8, Chapter 37, R. S. Mo. 1939.

Examination of our statutes does not disclose any other provisions purporting to authorize the investment of these escheated insurance funds in government bonds.

CONCLUSION

It, therefore, is our opinion that the insurance funds escheated under Section 5985a, Laws of 1941, page 397, may not be invested in government bonds.

III

However, even though we have reached the two conclusions above set out, there will come a time when the money arising under Article 1, Chapter 3, R. S. Mo. 1939, and perhaps the funds arising under Section 5985a, Laws of 1941, page 397, may be invested in government bonds.

The escheat created in Article 1, Chapter 3 R. S. Mo. 1939, is interlocutory for a period of twenty-one years (Sec. 642, R. S. Mo. 1939), after which if the money or property escheated remains unclaimed it is to become a part of the public school fund (Sec. 642, R. S. Mo. 1939; Sec. 6, Art. XI Mo. Const.) and may be invested in government bonds by the State Board of Education under the terms of Section 10874, R. S. Mo. 1939, and Section 9, Article XI of the Missouri Constitution.

The escheat created in Section 5985a, Laws of 1941, page 397, is interlocutory for a period of five years, after which, if the money escheated remains unclaimed it is, according to the terms of that section, to be "transferred to the general revenue fund of the State."

The validity of the portion just quoted from Section 5985a is open to question under Section 6, Article XI of the Missouri Constitution, which provides:

"* * * the net proceeds of all * * * property and effects that may accrue to the State by escheat, * * * shall be paid into the State Treasury, and securely invested and sacredly preserved as a public school fund; * * *"

There can be no question that these impounded insurance funds have "accrued to the State by escheat" and that being true when the escheat becomes absolute, upon the expiration of the five year period, the money unclaimed becomes a part of the public school fund under the Constitution, and may be invested in government bonds by the State Board of Education under the terms of Section 10874, R. S. Mo. 1939, and Section 9, Article XI of the Missouri Constitution.

CONCLUSION

It, therefore, is our opinion that the funds arising under Article 1, Chapter 3, R. S. Mo. 1939, and under Section 5985a, Laws of 1941, page 397, may be invested in government bonds by the State Board of Education when the escheat becomes absolute and the money is paid into the public school fund.

Respectfully submitted,

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APPROVED:

ROY MCKITTRICK
Attorney General

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