

SCHOOLS: Money from sale of buildings bought with unappropriated funds by state teachers college need not be deposited in the State Treasury.

*Copy to
Gen John*

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Mr. Roland A. Zeigel
Secretary
Board of Regents
Northeast Missouri State Teachers College
Kirksville, Missouri

Dear Sir:

We have your letter of recent date which reads as follows:

"The Northeast Missouri State Teachers College, at Kirksville, Missouri, requests your opinion relative to the following, to-wit:

Recently said college owned and controlled property was requested by the college to be sold by the State Purchasing Agent of the State of Missouri as surplus property.

The occasion for this request and sale being that said property, consisting of dwelling houses, be sold to private persons in order that said dwelling houses be cleared off the land which is the site for a proposed college owned and operated dormitory.

Said properties were sold by said State Purchasing Agent as requested as surplus property, and the money received by him amounted to \$2,021.00, which said sum was by said State Purchasing Agent turned to the Department of Revenue, which in turn is tendering the money to the State Treasurer as General Revenue.

For your information, the properties sold as surplus, together with the real estate said properties were situated on, were purchased and procured by the college with funds not appropriated to said college by

the State of Missouri or any agency thereof, but with unappropriated funds belonging to said State Teachers College. It is the contention of the college that the funds realized from the sale of said properties by said State Purchasing Agent still belong to the college and should not be permitted to go into the General Revenue Fund of the State of Missouri, but should by the State Treasurer, or other appropriate officers of the State of Missouri, be delivered to said Northeast Missouri State Teachers College in order that said funds might be spent by said Teachers College on the said dormitory construction project.

Your opinion on this question for the guidance of the State Treasurer and other officials, together with the Northeast Missouri State Teachers College, is hereby sought."

The Department of Revenue apparently construes the law to be that the funds you mentioned in your letter are state moneys and should be turned into the State Treasury in accordance with the provisions of Section 15 of Article IV of the Constitution of 1945 and Section 36 of Article III of said constitution. Section 15 of Article IV of the Constitution reads in part as follows:

"The state treasurer shall be custodian of all state funds. All revenue collected and moneys received by the state from any source whatsoever shall go promptly into the state treasury, and all interest, income and returns therefrom shall belong to the state."

Section 36 of Article III reads in part as follows:

"All revenue collected and money received by the state shall go into the treasury and the general assembly shall have no power to divert the same or to permit the withdrawal of money from the treasury, except in pursuance of appropriations made by law. ***"

To determine your question it thus becomes necessary to determine whether the money derived from the sale of the buildings mentioned in your letter constitutes "revenue collected and moneys received by the state

from any source whatsoever."

The only case we have been able to find in which the courts have decided a similar question is the case of State ex rel. Thompson v. Board of Regents for Northeast Missouri State Teachers College, 264 S.W. 608, 305 Missouri, 57. In that case the Board of Regents had purchased insurance policies upon buildings belonging to the college and had paid for said policies out of funds not appropriated by the Legislature for the support of said college. A loss had occurred under said policies, and the Board of Regents had collected damages from the insurance company, and the State Treasury was seeking to compel the Board of Regents to pay the proceeds of said insurance policies into the State Treasury. The Constitution at that time contained provisions almost identical with those above quoted so that the reasoning of the Court in that case would be applicable to the present situation insofar as the two constitutional provisions are concerned. In discussing the provision of the Constitution of 1875 which is almost identical with Section 15 of Article IV of the Constitution of 1945, the Supreme Court said, 264 S.W., l.c. 699:

"This provision, it will be seen from its terms, which are wisely chosen as a limitation upon power, is restricted to 'revenue collected and money received by the state from any source whatsoever.' By revenue, whether its meaning be measured by the general or the legal lexicographer, is meant the current income of the state from whatsoever source derived which is subject to appropriation for public uses. This current income may be derived from various sources, as our numerous statutes attest, but, no matter from what source derived, if required to be paid into the treasury, it becomes revenue or state money; its classification as such being dependent upon specific legislative enactment, or, as aptly put by the respondent, state money means money the state, in its sovereign capacity, is authorized to receive, the source of its authority being the Legislature. With this limitation--and the Constitution itself is but an instrument of limitations--it should be strictly construed.

Thus construed, the spirit which prompted the adoption of the provision is fully recognized and its purpose is promoted. Unless, therefore, it can be successfully contended, in harmony with well-recognized rules of interpretation, that the board of regents of the college is the state, and that moneys received by it other than from appropriations is state money, the constitutional provision will afford no support to the relator's contention.

While the board, in a sense, represents the state in the performance of its duties, it is but one of the many necessary instrumentalities through which the former is enabled to act within the scope of the powers conferred by law. These powers embody no attributes of sovereignty which would entitle them to be designated as the state's alter ego. While in a sense the board is an agent of the state with defined powers, the importance of its duties with their attendant responsibilities, is such as to necessarily clothe the board with a reasonable discretion in the exercise of same. This is inevitably true, first, because of the difficulty in framing a statute with such a regard for particulars as to cover every exigency that may arise in the future; and, second, because a restriction of the board's powers to the letter of the law would destroy its efficiency, and to that extent cripple the purpose for which the institution was created. Legislatures, therefore, moved by that wisdom which is born of experience, whether conscious or not of that aphorism that 'new occasions teach new duties; time makes ancient acts uncouth,' have contented themselves with defining in general terms the powers of such boards as are here under review, leaving the discharge of duties not defined, and which may, under changed conditions, arise in the future, to the discretion of the board."

After the above discussion the court went on to discuss the operations of the Board of Regents and especially their operations under implied powers. The Court concludes that the Board of Regents had implied powers to use their discretion in many of the business affairs of the institution. Further in the opinion the Court said, 264 S.W. L.c. 701:

"In the foregoing discussion of the constitutional provision invoked by relator, we have stated generally that no statute required the payment into the state treasury of the money here in controversy, and that a statutory enactment was a prerequisite to such payment and its receipt and deposit by the treasurer to entitle it, under the Constitution, to be classified as state money."

Likewise, there is no statute on the books now which requires the particular funds you mentioned in your letter to be paid into the State Treasury, and under the reasoning in the case above discussed, such funds would not, therefore, be state money nor would they be "revenue collected" by the state. To support its reasoning in the above mentioned case, the Supreme Court then discussed various statutes governing the Board of Regents of the college. One of the statutes discussed was Section 11505, R. S. Mo. 1919, which was almost identical with what is now Section 10767, p. 1685, L. 1945, which later section now reads as follows:

"The president of each board shall make an annual report to the state board of education, in the month of August in each year, of all receipts of moneys from appropriations, incidental fees, and all other sources, and the disbursements thereof, and for what purposes, and the condition of said college."

Said section impliedly gave the Board of Regents power to hold and disburse the insurance funds without their being first deposited in the State Treasury. Said section refers to moneys "from appropriations, incidental fees, and all other sources". (Underscoring ours).

Likewise, Section 10768, p. 1685, L. 1945, provides for a treasurer for the Board of Regents and prescribes his duties as follows:

"The treasurer of each board shall receive, keep and disburse all moneys under the control of the board of his district, and perform all such acts as appertain to his office, under the direction of the board, and make reports of the same to the board at its annual meeting. The treasurer of each board shall also make and furnish to the state board of education in the month of August of each year, an abstract which shall contain a full account of all moneys received and disbursed by his college during the preceding year, stating from what source received and on what account paid out, and the amount paid to each professor, teacher or other officer of the college; and said treasurer shall every two years report to the general assembly, under oath, an itemized statement of all receipts and expenditures for the two calendar years preceding, showing minutely all disbursements of money received from the state or other sources, and said college shall not be entitled to any appropriation unless such statement is so made."

Section 10768, supra, likewise implies that the Board of Regents will receive other moneys than those appropriated by the Legislature. Of course, if the constitutional provisions above quoted require the funds in question to be paid into the state treasury, Sections 10767 and 10768, supra, would be invalid insofar as they conflict with such constitutional provisions. However, under the reasoning in the Thompson case, said funds are not such as are required to be paid into the State Treasury, and Sections 10767 and 10768 of the statutes merely amount to an interpretation by the Legislature of the constitutional provisions above referred to to the effect that only current revenue and money received directly by the state are required to be paid into the State Treasury. The buildings which were sold under the circumstances you mentioned were not purchased out of money appropriated by the Legislature, but were purchased by some funds which the Board of Regents had in its hands from some other source. The Board of Regents will, of course, be required under Sections 10767 and 10768 to account for the proceeds of the sale of said buildings in its reports. If the General Assembly is not satisfied with the way unappropriated funds are thus being handled, it can pass such laws as it thinks advisable

under the circumstances. Up to now it appears that the Legislature has for more than one-half a century consented to the Board of Regents of the college handling some funds independently of the State Treasury.

Conclusion

It is, therefore, the opinion of this office that the proceeds of the sale of buildings purchased by the Board of Regents of the Northeast Missouri State Teachers College with funds not appropriated to said college by the Legislature are not required to be turned into the State Treasury, but may be kept and disbursed by the Board of Regents of said college.

Yours very truly,

Harry H. Kay
Assistant Attorney General

APPROVED:

J. E. Taylor
Attorney General

HHK/vlv