

GIFTS TO STATE: DISPOSITION;
WHEN PURPOSE OR FUND NOT
DESIGNATED:

Check payable to Treasurer of
Missouri in sum of \$2,000 in
payment of group life policy in
which State of Missouri is bene-
ficiary; the proceeds of check to
be deposited in treasury to credit
of ordinary revenue fund of state.



September 15, 1952

9-17-52

Honorable M. E. Morris
State Treasurer
State Capitol Building
Jefferson City, Missouri

Dear Sir:

Your request for a legal opinion of this office has been received
and reads in part as follows:

"It is requested that you please furnish
this department with a written opinion
stating where Check No. D 451570, dated
January 21, 1952, made payable to M. E.
Morris, Treasurer of the State of Missouri,
in the amount of \$2,000.00 should be de-
posited.

"This check is in payment of a group
insurance policy on J. Sigado who was in-
sured in the group of Kellogg Switchboard
& Supply Company employees."

Your letter requests an opinion as to where the proceeds of
above described check should be deposited. However, you have informed
us since the date of your letter that the request was meant to inquire
into what fund such proceeds should be deposited, rather than the place
of deposit; consequently, our opinion will be given on the facts dis-
closed by the later information, instead of that stated in the opinion
request.

Section 33.550, RSMo 1949, authorizes gifts to be made to the
state, and the duties of the director of revenue in accepting those
gifts. Said section reads as follows:

"Whenever any device, bequest, donation,
gift or assignment of money, bonds, or
choses in action, or any property, real,
personal or mixed, shall be made or offered

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to be made to this state, the director of revenue shall be and is hereby authorized to receive and accept the same on such terms, conditions and limitations as may be agreed upon between the grantor, donor or assignor of said property and said official, so that the right and title to such property shall pass to and vest in this state, and all such property so vested in this state, and the proceeds thereof when collected may be appropriated for educational purposes, or for such other purposes as the legislature may direct."

For purposes of our discussion herein, it is assumed that the gift was legally made and accepted; that the provisions of above section have been complied with, and the title to the gift is now vested in the State of Missouri.

In making the gift to the state, it is noted that the donor failed to provide any terms or conditions upon which it must be accepted, and without any indication as to the fund or purpose for which it must be used if accepted.

If such was the intention of the donor, this was legally proper, and is strictly in accord with the provisions of Section 33.550, supra. In effect said section provides that the proceeds of gifts to the state (not designated for a particular fund or use by the donor) may be appropriated for educational or such other uses as the legislature may direct. What the treasurer is to do with the gift until such time as the legislature may appropriate it for some special use is the matter for out immediate attention and discussion.

Article III, Section 36, Constitution, provides where all state revenue and money collected shall go, and reads 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. * * *"

Article IV, Section 15, Constitution of 1945, makes the state treasurer the custodian of all state funds, and his duties regarding such custody. Said section reads as follows:

"The state treasurer shall be custodian of all state funds. All revenue collected and moneys received by the state from any source

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whatsoever shall go promptly into the state treasury, and all interest, income and returns therefrom shall belong to the state. Immediately on receipt thereof the state treasurer shall deposit all moneys in the state treasury to the credit of the state in banking institutions selected by him and approved by the governor and state auditor, and he shall hold them for the benefit of the respective funds to which they belong and disburse them as provided by law. Such institutions shall give security satisfactory to the governor, state auditor and state treasurer for the safekeeping and payment of the deposits on demand of the state treasurer authorized by warrants of the state auditor. No duty shall be imposed on the state treasurer by law which is not related to the receipt, custody, and disbursement of state funds."

Section 30.240, RSMo 1949, provides how the treasurer shall keep the moneys of the state, and his duties relating thereto, and reads in part as follows:

"All moneys now belonging to or that may at any time hereafter belong to the state, that is now in the state treasury or that hereafter may be required by law to be paid into the treasury for any purpose whatever, shall immediately on receipt thereof be deposited by the treasurer to the credit of the state, for the benefit of the fund to which such moneys respectively belong, in such banks, bank or banking institutions in this state as he may from time to time, with the approval of the governor and state auditor, select. * * *"

None of the above constitutional or statutory provisions provide, and we are unable to find any other constitutional, statutory provisions, or court decisions which do provide into what fund financial gifts shall go, when the donor has failed to designate the fund or purpose for which such gifts must be used. It appears that this particular situation has never been presented, or passed upon by the appellate courts of the state.

While Section 33.080, RSMo 1949, does not provide that such gifts shall be deposited in the treasury to the credit of a particular fund, or that gifts of this nature can only be used for certain purposes, yet it does appear that the situations to which the provisions of this section are applicable are similar in some respect to the present situation, and are useful in reaching a decision as to what fund the gift shall be credited. Said section reads as follows:

"All fees, funds and moneys from whatever source received by any department, board,

bureau, commission, institution, official or agency of the state government by virtue of any law or rule or regulation made in accordance with any law, shall, by the official authorized to receive same, and at stated intervals be placed in the state treasury to the credit of the particular purpose or fund for which collected, and shall be subject to appropriation by the general assembly for the particular purpose or fund for which collected during the biennium in which collected and appropriated. The unexpended balance remaining in all such funds (except such unexpended balance as may remain in any fund authorized, collected and expended by virtue of the provisions of the constitution of this state), shall at the end of the biennium and after all warrants on same have been discharged and the appropriation thereof has lapsed, be transferred and placed to the credit of the ordinary revenue fund of the state by the state treasurer. Any official or other person who shall willfully fail to comply with any of the provisions of this section, and any person who shall willfully violate any provision hereof, shall be deemed guilty of a misdemeanor; provided, that in the case of state educational institutions there is excepted herefrom gifts or trust funds from whatever source: Appropriations, gifts, or grants from the federal government, private organizations and individuals; funds for or from student activities, farm or housing activities, and other funds from which the whole or some part thereof may be liable to be repaid to the person contributing the same, and hospital fees; all of which excepted funds shall be reported in detail quarterly to the governor and biennially to the general assembly."

In the enactment of this section it appears to have been the intention of the legislature that no unexpended balances should remain in the various state funds at the end of the biennium, after all obligations on said funds were discharged and the appropriations therefor had lapsed, and that under such circumstances said balances should be transferred by the treasurer to the credit of the ordinary revenue fund of the state. From this fund the legislature might make appropriations for the various purposes authorized by law when and where the need is greatest. It seems only logical that all state funds not previously obligated for any particular use or purpose should be credited to this fund and made available for future appropriations.

It seems that such was the intention of the legislature with reference to the unexpended balances referred to in this section, and

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that the status of the proceeds of the gift is so similar to that of the unexpended balances that they should be disposed of in the same manner, that is, by depositing them in the state treasury to the credit of the ordinary revenue fund.

CONCLUSION

It is the opinion of this department that a check payable to M. E. Morris, Treasurer of Missouri, in the sum of \$2,000.00, and given in payment of a group life policy in which the State of Missouri is named beneficiary; that the proceeds of said check should be deposited in the treasury to the credit of the ordinary revenue fund of the state by the treasurer.

Respectfully submitted,

PAUL N. CHITWOOD
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

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