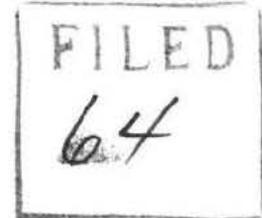


STATE TREASURER: The attached trust agreement between  
LAND RECLAMATION COMMISSION: the State Treasurer and the Missouri  
Land Reclamation Commission covering  
moneys received by the Commission which are required as bond by Sec-  
tions 444.772 and 444.778, RSMo Supp. 1971, is not in violation of  
Section 13 or 15 of Article IV, Constitution of Missouri.

OPINION NO. 64

June 7, 1972

Mr. Robert Neuenschwander, Director  
Land Reclamation Department  
Room 36B, Capitol Building  
Jefferson City, Missouri 65101



Dear Mr. Neuenschwander:

This is in answer to your request for an official opinion of this office concerning the validity of a trust agreement between the State Treasurer and the Missouri Land Reclamation Commission covering moneys received by the Commission which are required as bond by Sections 444.772 and 444.778, RSMo Supp. 1971.

Section 444.772 provides that all persons engaging in the surface mining of clay, limestone, sand and gravel must obtain a permit. As a condition for a permit, the applicant must file a penal bond "conditioned upon the faithful performance of the requirements set forth in sections 444.760 to 444.786 and of the rules and regulations of the commission."

Section 444.778 provides in part as follows:

". . . The bond shall be signed by the operator as principal, and by a good and sufficient corporate surety, licensed to do business in this state as surety. . . . In lieu of a bond, the operator may deposit cash or securities with the commission in an amount equal to that of the required surety bond on conditions as above prescribed.

"2. The bond or security shall remain in effect until the mined acreages have been reclaimed, approved and released by the commission.

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"6. The commission shall have the power to reclaim, in keeping with the provisions of sections 444.760 to 444.786, any affected land with respect to which a bond has been forfeited.

"7. Whenever an operator shall have completed all requirements under the provisions of sections 444.760 to 444.786 as to any affected land, he shall notify the commission thereof. If the commission determines that the operator has completed the requirements, the commission shall release the operator from further obligations regarding the affected land and the penalty of the bond shall be reduced proportionately."

It is clear that an operator, in lieu of bond, has the right to deposit cash with the Commission. The purpose of the bond is to insure compliance with the land reclamation requirements of the law. If the operator fails to meet the land reclamation requirements, the bond can then be forfeited. Section 444.782, RSMo Supp. 1971.

Such forfeited bond money is then put in the Mined Land Reclamation Fund, the purpose of which is to use the money to reclaim the land for which the bond was forfeited. Sections 444.780 and 444.784, RSMo Supp. 1971.

The question asked is whether a certain trust agreement is a proper way to handle and keep the cash money in lieu of bond until such time as either there is a forfeiture or the money is returned to the operator.

The method proposed is a trust agreement (copy attached) between William E. Robinson, State Treasurer, and the Land Reclamation Commission. However, before discussing the terms of the agreement, it is necessary to discuss an executive order of Governor Warren E. Hearnes (copy attached) which order purports to establish the "Mined Land Reclamation and Conservation Trust Fund for the purpose of receiving and disbursing bond moneys which are payable to the Land Reclamation Commission."

The order then designates that "The Honorable William E. Robinson, Treasurer of the State of Missouri, shall be trustee of such fund," and that "moneys from the fund shall be disbursed by William E. Robinson upon requisition by the Land Reclamation Commission approved by the Comptroller of the State of Missouri."

The trust agreement, after stating the reason for the agreement and after acknowledging the executive order, then: in paragraph (1) establishes the fund; in paragraph (2) designates William

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E. Robinson, Treasurer of the State of Missouri, as custodian and trustee of the fund; in paragraph (3) provides for the custodian and trustee to make disbursements from the fund upon requisition by the Land Reclamation Commission, and upon approval by the State Comptroller; in paragraph (4) states that the trustee shall keep all moneys delivered for deposit in the trust fund and shall disburse only as provided in the trust agreement, shall keep complete and accurate records which are available to the State Comptroller and are to be audited by the State Auditor; in paragraph (5) that the agreement is in effect so long as needed in connection with moneys received for bonding purposes; and in paragraph (6) that if William E. Robinson ceases to be State Treasurer he shall cease to be custodian and trustee and deliver the fund to the successor State Treasurer who shall automatically become trustee of the fund.

It is not our duty, nor would it be proper, for this office to address itself on whether this arrangement is the preferable way to handle these cash bond moneys. See Petition of Board of Public Buildings, 363 S.W.2d 598, 608 (Mo. banc 1962). The question of whether this trust agreement is proper or valid is not whether it should necessarily be done this way but whether there is any constitutional provision or law prohibiting this specific trust agreement.

Since the trust agreement, as established by executive order of the Governor, purports to give duties to the State Treasurer and the State Auditor, the question narrows to whether or not the agreement is prohibited by Section 13 or Section 15 of Article IV of the Constitution of Missouri.

The pertinent language which prescribes the duties of the State Auditor, Section 13, reads as follows:

" . . . No duty shall be imposed on him by law which is not related to the supervising and auditing of the receipt and expenditure of public funds."

The pertinent language of Section 15, which pertains to the State Treasurer, reads as follows:

" . . . No duty shall be imposed on the state treasurer by law which is not related to the receipt, investment, custody and disbursement of state funds."

There is no similar constitutional provision relating to the State Comptroller. The duties of the Comptroller are prescribed by Section 33.060, RSMo, which reads:

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"The Comptroller shall keep the general accounting books of the state, and be the keeper of all public account books, accounts, vouchers, documents, and all papers relating to the accounts and contracts of the state, and its revenue, debt and fiscal affairs, including an account of all moneys received by the state from any source and of every separate fund in the treasury authorized by law."

It is apparent that if the trust agreement is valid under the constitutional provisions relating to the Auditor and Treasurer then it would also be valid as to the Comptroller.

First, we note that the constitutional prohibitions in both Sections 13 and 15 are against imposing duties by law with no specific reference to executive order which seems to be the case here. However, it is unnecessary to determine whether the executive order has the effect of law or is an attempt to circumvent the Constitution, or whether because of the executive order, the constitutional provisions are not applicable. This is because even if the executive order is invalid there would still be the question of whether the trust agreement standing on its own is valid, having been entered into by the named state officers.

In other words, even if the executive order was invalid, the question would remain as to whether these officers would be prohibited from entering into such a trust agreement.

In Petition of Board of Public Buildings, supra, the State Treasurer purportedly was imposed with the duty by resolution of a state agency as custodian of certain funds. The court stated, 1.c. 363 S.W.2d 598, 608:

". . . The statutes in question do not provide that the State Treasurer shall be the custodian; in fact, they are silent as to the custody. The law has not imposed this duty on the Treasurer; and the prohibition runs against the legislature. There has certainly been no express violation of § 15, Art. 4 of the Constitution. There was no similar provision in the 1875 Constitution, and the background of the 1945 provision lies in the prior history of a building up of the power and patronage of elected officials by giving to them new functions and duties. . . . We hold, upon the interpretation stated above, that by the present proposal the essential and substantive duties of the Treasurer are not altered or extended."

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Therefore, it is our opinion that the trust agreement is not violative of either Section 13 or 15 as duties imposed by "law."

CONCLUSION

For the foregoing reasons, it is the opinion of this office that the attached trust agreement between the State Treasurer and the Missouri Land Reclamation Commission covering moneys received by the Commission which are required as bond by Sections 444.772 and 444.778, RSMo Supp. 1971, is not in violation of Section 13 or 15 of Article IV, Constitution of Missouri.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Walter W. Nowotny, Jr.

Yours very truly,

A handwritten signature in black ink, appearing to read "John C. Danforth". The signature is written in a cursive style with a large, prominent initial "J".

JOHN C. DANFORTH  
Attorney General

Attachments