

State Treasurer—Legal Tender—Checks.

The state treasurer is not required to issue his official receipt for anything but legal tender. Checks credited to a fund may not be charged back against it if not paid upon presentation to bank on which they are drawn.

F. E. Williams, Esq.
State Treasurer,
Helena, Montana.

July 6, 1929.

My dear Mr. Williams:

You have requested my opinion on the following questions:

“1. Can the state treasurer refuse to issue his official receipt for anything but legal tender?”

"2. In case of non-payment of a check, can the state treasurer legally charge the amount of same back against the fund to which he credited the same?

"3. Has the state treasurer the authority with the sanction of the state board of examiners, to require the departments to clear their checks before they have lost their right of clearance by depositing same in Helena banks, such deposits to be amply protected by depository banks furnishing indemnifying bonds or pledging securities. Such moneys not being officially receipted for do not come under the provisions of our depository law, but are moneys in which the state has an interest and at the time required by law for department reports and remittances will become state moneys."

In answer to your first question, will say that the state treasurer in issuing his official receipt is receipting for money had and received; anything that is not legal tender, such as a personal check, is not money but simply an evidence of indebtedness, and your first question is therefore answered in the affirmative.

In answer to your second question, will say that there is no authority of authorizing the state treasurer to accept anything but legal tender, and if he accepts personal checks and issues an official receipt therefor, he does so at his own risk and the same cannot be charged back against the fund to which he credited the same.

In answer to your third question, as above stated, the state treasurer is not required to accept and issue his official receipt for anything other than legal tender, and if he does, he is doing so at his own risk. Therefore, he has the right to either refuse to receipt for personal checks or, if he cares to assume the responsibility, he may impose whatever conditions precedent thereto as he deems advisable for his own protection.

Very truly yours,

L. A. FOOT,
Attorney General.