Opinion No. 167.

Teachers Retirement System—Expense Fund—Appropriations.

HELD: The State's contribution to the Expense Fund of the Teachers Retirement System is an appropriation from the General Fund of the State.

October 5, 1937.

Honorable Ray N. Shannon
State Treasurer
The Capitol

Dear Sir:

You have asked if the $4,000 contributed by the State to the Teachers Retirement System under Section 8, subsection 5 (c), Chapter 87, Laws of 1937, is an appropriation from the General Fund, or if it is to be deducted from the $75,000 contributed under Section 11.

Section 8 of the Laws of 1937 provides for the method of financing the Teachers Retirement System. Five funds are created, an annuity savings fund, an annuity reserve fund, a pension accumulation fund, a pension reserve fund, and an expense fund.

The Annuity Savings Fund consists of contributions from the compensation of members to provide for their annuities.

The Annuity Reserve Fund is the fund in which the reserves on all annuities are held and from which the annuities are paid.

The Pension Accumulation Fund is the fund in which shall be accumulated all reserves for the payment of all pensions and from which pensions or benefits shall be paid to the beneficiaries. The State is to pay into this fund certain percentages of the earnable compensation of each member of the Retirement System as normal and deficiency contributions. But until the legislature has established reserves the parts of the Act dealing with Reserve to be built up by State contributions are inoperative. But until that time the State shall pay the retired teachers the amounts due them under the provisions of the Act, not exceeding $75,000 in each year. The process for computing the normal contribution rate, the deficiency contribution rate, and the amount payable by the state is set forth and provision is made for the discontinuance of the deficiency contribution once adequate reserves are accumulated. This subsection further provides that interest on all funds of the retirement system shall be credited to the Pension Accumulation Fund and the amounts required to allow interest on the Annuity Savings Fund, the Annuity Reserve Fund and the Pension Reserve Fund are to be transferred from the Pension Accumulation Fund. The Retirement Board is given authority to transfer to and from the Pension Accumulation Fund the amount of any surplus or deficit in the Annuity Reserve Fund or the Pension Reserve Fund, as shown by actuarial valuation.

In the Pension Reserve Fund is held the reserves on all pensions granted to members not entitled to prior service credit and it is from this fund that this type of pensions and benefits are paid.

The Expense Fund is the fund from which the administrative expenses of the retirement system are paid. This fund is accumulated by (a) a yearly deduction of $1.00 from the compensation of each member of the system, (b) transfers from the Annuity Savings Fund, and (c) contribution by the State not to exceed $4,000. It is this $4,000 about which you have inquired.

Section 11 provides:

"Contribution by the State. (1) From and after the first day of July, 1937, there shall be and is hereby appropriated from all moneys derived from the sales of liquor at all of the state liquor stores within the State, five percentum (5%) of all of the net receipts of such sales for the purpose of creating and maintaining the pension accumulation fund created by and in Section 8 of this act. Beginning on the first day of August, 1937, the Montana liquor control board shall on the first day of each month or as soon thereafter as the said Montana liquor control board has determined the net receipts from all sales of liquor at the state liquor stores for the month next preceding, disburse to the state treasurer a sum equal to five per centum (5%) of such net receipts, such sum to be taken from moneys derived from the sale of liquor at the state liquor stores. If at any time when such disbursement is required hereby to be made, there are not sufficient moneys on hand to make the same, the deficit shall be made up from the first receipts from the sales of liquor at the state liquor stores received by the said Montana liquor control board thereafter. The state treasurer shall immediately upon receipt of any and all sums hereby required to be made to him, place them in the pension accumulation fund created by and in Section 8 of this act. Provided that if the receipts shall exceed the amount required under the provisions of subdivision (3) (a), Section 8 of this act, said surplus shall revert to the general fund of the State."

It is clear that the state treasurer is required to pay all receipts under section 11 of Chapter 87, Laws of 1937, to the Pension Accumulation Fund, and provision for reversion to the General Fund is made in case of surplus. All through the act the legislature has provided for transfer of moneys from one fund to another under certain conditions, but in this particular section there is no such provision. Likewise, in Section 8, subsection 3, there are provisions for transfer of moneys from the Pension Accumulation Fund to other funds mentioned in subdivision (i) of subsection 3. But again there is no provision for the transfer of any money to the Expense Fund. The familiar rule of expressio unius would apply, and the logical conclusion is that the legislature did not intend any transfer from the Pension Accumulation Fund to the Expense Fund. No source for the $4000 expense money is specified and no specific fund has been named as in the case of the other appropriations.

Disbursements for a purpose for which a special fund has been created, or set up, must be made from such funds rather than from the general funds of the state, but where appropriations are not specifically made payable out of a special or particular fund they are payable only from the general fund.

59 Corpus Juris, 232.

Therefore, it is my opinion that the appropriation for the Expense Fund in Section 8, subsection 5 (c) of Chapter 87, Laws of 1937, is an additional appropriation to the $75,000 in Section 11 and is payable out of the General Fund of the State.