

## No. 36

**STATE FORESTER—HOUSE BILL NO. 10—DISPOSAL  
OF FUNDS—FORESTERS' COOPERATIVE WORK  
FUND—SLASH DISPOSAL FUNDS**

- Held: 1. Under House Bill No. 10, all funds remaining in Foresters' Cooperative Work Fund, as of July 1, 1941, should be transferred to the General Fund.
2. All slash disposal funds remaining on hand on July 1, 1941, should be transferred to the general fund, certain portions thereof, however, being impressed with a trust in favor of persons entitled to refunds.
3. Federal funds granted to assist the State Forester fire prevention remaining on hand July 1, 1941, should not be transferred to the General Fund, as such moneys are accepted by the State in trust for the purposes granted.

March 3, 1941.

Mr. Rutledge Parker  
State Forester  
Helena, Montana

Dear Mr. Parker:

You have requested my opinion as to the effect of House Bill No. 10 on the status of funds remaining on hand July 1, 1941, which are derived from various sources in connection with State Forestry work.

To present a clear picture of the source and purpose of the funds involved, I shall enumerate them:

1. Foresters' Cooperative Work Fund. Section 1830.10 of the Revised Codes of Montana, 1935, provides for the creation of this fund, the sources of which are declared to be appropriations or allotments "from the State, counties, municipalities, United States Government, or any department thereof, or other organization or individual." License fees for use of portable saw mills upon forest lands go into this fund. (Section 1839.2, Revised Codes of Montana, 1935). Section 22 of Chapter 128 of the Laws of 1939 further declares that all moneys received from all public agencies, private agencies and individuals cooperating with the State Forester or the Board of Forestry shall

be placed to the credit of this fund. Section 21 of the same Act provides for the payment of fines collected for forest law violations into such fund. Sections 9, 10 and 11 of the Act provides for a system of fire control over forest lands by the State, and the raising of funds to defray such expenses by charges against the private land owners, which funds go into the Foresters' Cooperative Work Fund.

2. Slash Disposal Funds. Sections 2778.6 and 2778.7, Revised Codes of Montana, 1935, provide for slash removal by the State Forester in certain cases, the cost of which is to be recovered in certain instances after the work is done and advance security for such costs is obtained in other cases. Under the handling of such funds, it is occasionally necessary to make refunds where the option to perform the slash removal is given the owner or operator.

3. Federal Funds. These funds are provided under a National Forestry Program to assist the states through some qualified state agency. The Secretary of Agriculture is empowered to assist the state in fire prevention for private and state lands by furnishing funds not to exceed the amount expended by the State for its Forest Fire Protection System.

Section 23 of Chapter 128 of the Laws of 1939 makes the following specific direction for disposal of such funds:

"The following funds may be expended as directed by the Board for fire prevention, detection and suppression: All moneys collected by county treasurers as assessments on forest lands for forest protection; moneys collected for the abatement of public nuisances; all fines collected for the violation of this Act; the State's share of the cooperative fire protection funds allocated by the Federal Government and any other funds provided for the purposes herein indicated. All other cooperative funds collected, appropriated or allocated for the use of the State Forester, including funds for the removal of slash hazards resulting from logging or other wood operations on State and private forest lands, those provided for the purpose of helping to maintain the maximum productivity of the forests of the State, those provided for purposes designed to assist the farmers of the State in the establishment of windbreaks and woodlots in localities where such forest plantings are helpful, and funds for other cooperative work, shall not be expended except for the specific purposes for which the same were collected, appropriated or allocated.

For convenience, we shall hereafter refer to the above-mentioned funds by number.

Section 4 of House Bill 10, which has been passed and approved and will become effective July 1, 1941, as it relates to your particular inquiry and to the funds involved, provides:

"Section 4. Any and all balances remaining in any fund or funds established, created, kept or maintained in the State Treasurer's office for any of the license or tax laws, specifically mentioned in Section 1 of this Act, or for any of the departments, or bureaus, or divisions thereof, or for any of the officers specifically mentioned in Section 2 of this Act, or for any of the institutions or departments thereof specifically mentioned in Section 3 of this Act, at the close of the fiscal year ending July 1, 1941, shall be, by such State Treasurer, immediately after the close of such fiscal year, transferred to and shall become a part of the State General Fund, excepting moneys for school purposes which under existing law may not be apportioned or distributed until after July 1, 1941."

The Section just quoted refers to the "officers specifically mentioned in Section 2" and an examination of Section 2 of the Bill reveals that it includes "State Forester."

From the foregoing language contained in House Bill No. 10, it appears the Legislature has tersely and unmistakably directed all funds should be transferred into the General Fund on July 1, 1941.

The question presents itself, therefore, as to whether the Legislature has the power to cause these funds to be diverted from the purposes for which they were raised.

The language employed in House Bill No. 10 makes it clear that one of the prime objects of this legislation is to require payment to the State Treasury for the credit of the general fund of certain fees and exactions which, under the practice heretofore prevailing, have been retained by the officers, departments, and bureaus in charge of the particular activity in the course of which such fees and exactions have been collected, and which have been expended at the discretion of such officers, departments and bureaus in carrying on their respective activities, without specific legislative appropriation.

In the case of *State ex rel Sherman vs. Pape* (Wash.), 174 Pac. 468, the State Forester received moneys from forest land owners under fire protection laws almost identical to those of Montana, and sought to apply such funds in payment of expenses of patrolling and fire protection. Suit was brought to prevent him from using the funds in this fashion, the contention being that the moneys should be paid into the State Treasury. The Court held it was unnecessary that such funds go into the State Treasury. The Court, however, expressly stated:

"In the exercise of its police power, the state undoubtedly could have made all funds its own, to be dealt with as state funds contemplated by the Constitution; but it was not necessary so to do. The legislative wisdom could in its discretion provide for the collection and administration of the funds without making them state or public funds. This the Legislature by this Act undoubtedly did, and it is not our business to question its wisdom. These funds were not taxes levied and collected for state purposes generally, but were assessments laid upon private lands particularly for the benefits done those private lands. It was not necessary, therefore, that the sums imposed and collected should come into the State Treasury as provided by Article 7, Section 6."

In speaking of certain fees collected by the State Railroad Commission, the Supreme Court of Nebraska in the case of *Bollen vs. Price*, 261 N. W. 689, said:

"There is argument as to the proper designation to be given this fund, which it is conceded is properly in the state treasury, whether it consists of excess fees or whether it is a trust fund without a name. We do not think it is material by what name it shall be designated. The facts are it was paid and collected as fees under the provision of the Act of 1933 and . . . was not merely entrusted to the State Treasurer as custodian, but was actually in the treasury and became a part of the State's funds entrusted to the Treasurer in his official capacity as such officer."

In *Game & Fish Commission vs. Talbott* (Ky.), 64 S. W. (2nd) 889, the Court held that the Fish & Game Fund, built up by fines, forfeitures, penalties, license fees, etc., was a public fund of the state and said:

"The State has always kept the money raised by such licenses, fines, etc., for the use and benefit of this game and fish protection fund, but that was because it chose to do so, not because it had to do so."

In 1933 the General Assembly of the State of Missouri passed an Act directing the State Treasurer to transfer to the general revenue fund of the State all moneys in certain funds. The right to do so was not questioned in a case involving the Board of Barber Examiners' Fund. (*State ex rel Davis v. Smith* (Mo.), 75 S. W. (2nd) 828.)

From the foregoing authorities, it appears the Legislature may, if it wishes, transfer the balance remaining in fund No. 1 into the General Fund of the State. This it has done under House Bill No. 10.

As to fund No. 2, it appears certain slash disposal funds are collected by the State Forester to be refunded, when the slash disposal has been satisfactorily completed by the owner or operator. And such money to be refunded is in trust for such owner and operator entitled thereto, and the State is powerless to govern its disposal. Claims for refund from money paid in for slash disposal purposes prior to July 1, 1941, but which claims cannot be made until after such date, must be paid even though such money has been commingled with the General Fund, as the moneys for which such claims are made constitute trust funds, as we have previously pointed out. All other moneys in such fund remaining on hand July 1, 1941, should be transferred to the General Fund and are not impressed with a trust—despite the fact that the State Forester has incurred obligations for slash disposal work performed by the State by virtue of which such funds were collected. Such obligations, existing before July 1, 1941, if any, should be met from this fund prior to its transfer to the General Fund.

All of fund No. 3 constitutes a trust fund, and such federal moneys should be expended only for the purposes for which they were granted. This fund should not be diverted—and, consequently, any balance remaining in such fund on July 1, 1941, should not be transferred into the general fund. (State ex rel Armington vs. Wright, 17 Mont. 565. 44 Pac. 89; Melgard vs. Eagleson (Idaho), 172 Pac. 655.)

Sincerely yours,

JOHN W. BONNER  
Attorney General

(Editor's Note: House Bill 10, referred to above, appears as Chapter 14, Laws of 1941.)