

**License. Refunding Of.**

When the state's proportion of a license collected by a county treasurer has been paid into the state treasury it can be refunded only by act of the legislative assembly authorizing the same as a legitimate claim against the state.

Helena, Montana, August 6th, 1906.

Mr. F. H. Ray, Assistant Examiner, Helena, Montana.

Dear Sir:—I am in receipt of your favor of the 31st ult., in relation to the right and authority of the State Treasurer, under the law, to refund the sum of \$82.50 being the state's portion of a saloon license collected from one Jake Ross. It appears that a license was issued Jake Ross for the conduct of a saloon at the camp of Mason, and that thereafter, because of agitation, the same was surrendered by the licensee for cancellation, and thereupon, by order of the county commissioners of Broadwater County, the entire amount of money paid for such license was ordered repaid to the licensee. In the meantime, it appears that the state's proportion of the said license amounting to the sum of \$82.50 was remitted by County Treasurer W. L. Cronk to State Treasurer James H. Rice and that said money was converted into the general fund of the State Treasury. The question now arising is whether or not the state treasurer can refund the state's portion of said license so as to reimburse Broadwater County.

The money having been paid into the state treasury it is impossible to take it or any portion thereof therefrom except as authorized by the constitution and law. It is provided by Sec. 34 of Art. 5 of the State Constitution that "no money shall be paid out of the treasury (state) except upon appropriations made by law and on warrant drawn by the proper officer in pursuance thereof, except interest on the public debt."

And by Sec. 20 of Art. 7 of the Constitution it is provided that no "claims against the state except for salaries and compensation of officers fixed by law, shall be passed upon by the legislative assembly without first having been considered and acted upon by" the State Board of Examiners.

In order, therefore, to enable Broadwater County to recover from the state the amount of its claim it will be necessary to file a claim for such amount with the State Board of Examiners, by whom such claim will be referred to the next legislative assembly for consideration and appropriate action. It is likely that no difficulty will be encountered in securing the passage of a bill authorizing the payment of such claim.

Yours respectfully,

ALBERT J. GALEN,

Attorney General.