

State Examiners Fund, Purpose Of, Transfer to General Fund.

The salary of the State Examiner, and of his assistants and his expenses, should be paid by warrants drawn on the state examiners fund. When such fund is exhausted, the same should be paid by warrants drawn on the general fund.

Where such salary and expenses have been paid by warrants drawn on the general fund before exhausting the state examiners fund, the board of examiners have authority to order a transfer of money from the state examiners fund to reimburse the general fund.

Helena, Mont., August 31, 1906.

State Board of Examiners, Helena, Mont.:

Gentlemen—Your request for an opinion upon the following question received:

Can the money in the State Treasury which is now credited to the State Examiners' fund be transferred to the general fund?

Sections 495 and 496 of the Political Code, as amended by the Laws of 1897, page 107, and as amended by the Laws of 1903, page 187, provide for the salary of the state examiner and of his assistants and all necessary office and traveling expenses.

Section 497, as amended by said laws of 1897 and 1903, provide:

"That for the purpose of just distribution of the expenses incurred in pursuance of this title, there is created a fund which shall be known as 'the state examiners' fund,' etc."

Then follows a classification of fees to be paid by the different counties for the examination of the books of the county, and also the fees to be paid by state banks, building and loan associations, etc., for the examination of such institutions.

The latter part of said Section 497 reads as follows :

"Any excess of the expenses of such examination incurred in pursuance of this title, over and above the fee herein provided for, shall be paid by the state from any money in the 'general fund' not otherwise appropriated."

The only reasonable construction that can be placed upon the above section is that it was the intention of the Legislature that the salary of the state examiner and his assistants and the office and traveling expenses of their office, should be paid out of the state examiners' fund, it being especially provided that in the event that such fund should not

be sufficient for this purpose, that the excess should be paid from any money in the general fund not otherwise appropriated.

The fact that the general appropriation law appropriated from the general fund the full amount allowed for salaries and offices and traveling expenses, in no way affects the provisions of the sections quoted above. The general appropriation law simply provides "that the following sums, or as much thereof as may be necessary,, be appropriated for the purpose therein mentioned.

In our opinion, the salary and office and traveling expenses of the state examiners' office should be paid by warrants drawn on the state examiners' fund, so long as there is any money in such fund. Whenever such fund is exhausted, then the warrants should be drawn upon the appropriation made out of the general fund for such purposes. It appears, however, that all warrants for the payment of the salaries and expenses of this office for the past two years have been drawn on the general fund, and that there has accumulated in the state examiners' fund the sum of \$9,560 up to this date. As warrants should have been drawn on the state examiners' fund, so long as there was any money in such fund, it is clear that at this time the state examiners' fund is indebted to the general fund to the amount equal to that which should have been drawn out of the state examiners' fund since November 30, 1904, and, therefore, the state board of examiners would at this time have authority to order a transfer of such an amount from the state examiners' fund to the general fund, upon the grounds that said examiners' fund is indebted to the general fund for such an amount.

Very Truly Yours,

ALBERT J. GALEN,

Attorney General.