Appropriations, Cannot Refund Money Without—Fine Illegally Assessed—State Auditor Cannot Draw Warrant For.

Where a justice of the peace illegally assessed a fine, which was remitted to the State Treasurer, the State Auditor is without authority to draw a warrant for refunding the same without a specific appropriation therefor.

Helena, Montana, January 8, 1920.

Hon. J. L. DeHart,
State Game Warden,
Capitol.

Dear Sir:

Replying to your verbal inquiry of recent date in which you submit the following proposition:

> "May the State Treasurer refund money which was remitted to him by a justice of the peace for a fine assessed against an Indian for violating the state game laws, which said fine was illegally assessed and collected by reason of said justice of the peace being without jurisdiction and the said Indian and crime committed not coming within the jurisdiction of the laws of the State of Montana, the fine so assessed having been remitted and now being in the funds of the State Treasurer?"

That the claim against the State is just and there should be a refund made, there is no doubt, and the only question for determination is whether or not, under the law, the State Auditor can draw a warrant on the treasury without a specific appropriation to draw against.

Our Constitution prohibits drawing money from the treasury except in pursuance of a specific appropriation, and declares that "no money shall be paid out of the public treasury except upon appropriation made by law, and no warrant drawn by the roper officers in pursuance thereof, except interest on public debt." (Art. 5, Sec. 34.)

It is my opinion that the clear intent of this provision is to require specific appropriations and prohibit their diversion to other purposes. There can be no implicit appropriation, as I view it, of money under our Constitution.

This, I think, is a correct statement of the law, and as there is no secific appropriation against which the State Treasurer can draw a warrant in this case, it is his duty to refuse to do it.

Respectfully,

S. C. FORD,

Attorney General.