

**Fees—State Treasurer—Secretary of State—Refund.**

There is no authority of law by which fees illegally collected may be refunded without an Act of the Legislative Assembly expressly authorizing such refund.

C. T. Stewart, Esq.,  
Secretary of State,  
Helena, Montana.

My dear Mr. Stewart:

You have submitted to this office your correspondence relating to the refund to the Marshall-Wells Company of certain filing fees paid by it for increase of its capital stock, and have asked my opinion thereon.

It is my understanding, from the facts submitted, that this case is governed by the decision of the supreme court of this state in the case of J. I. Case Co. vs. Stewart, 60 Mont. 380, and that, under the decision in the above case, the Marshall-Wells Company is entitled to a refund of the fees paid by it to the amount of \$769.00.

It is unfortunate that the Legislative Assembly of this state has not seen fit to enact any legislation which will authorize state officers to make refund of moneys illegally collected by the latter, upon such illegality being declared by the supreme court. As the law now stands, after moneys have been paid into the general fund of the state, there is no way by which they can legally be withdrawn therefrom, except by an act of the Legislative Assembly expressly authorizing the same.

Chapter 188 of the Laws of 1921 provides for the payment of license fees "under protest," and directs that the State Treasurer may refund these license fees if it be decided by the courts that the claimant is entitled thereto.

It is my understanding, however, that in the case of the Marshall-Wells Company the fees in question were paid without protest and were deposited by you in the general fund of the state.

It is, therefore, my opinion that you cannot legally make refund of the money in question without an Act of the Legislative Assembly expressly authorizing you so to do.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.