

**Funds—Deposits—Interest — State Treasurer — Amendments.**

Interest on each of funds mentioned in opinion goes to such fund. The special provisions in each case, as stated in opinion, govern as against general statute carried forward from time to time by amendatory legislation.

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State Treasurer,  
Helena, Montana.

May 16, 1929.

My dear Mr. Williams:

You have requested an opinion as to House bill 289 passed by the recent session of the legislature which provides that "all interest paid and collected on deposits shall be, by the State Treasurer, credited to the General Fund of the state," and particularly as to whether interest earned by funds hereinafter enumerated should be credited to such funds or to the general fund. You mention the general fund, industrial accident fund, hail insurance fund, common school interest and income fund, vocational rehabilitation fund and vocational educational fund.

House bill 289 is a bill which amends that which was Section 183 R.C.M. 1907. Under the provisions of that section "all interest paid and collected on deposits shall be, by the treasurer, credited and belong to the particular fund to which belong the moneys deposited and on which interest is paid." This section was amended by Chapter 129, Laws of 1909, to read: "all interest paid and collected on deposits shall be, by the State Treasurer, credited to the general fund of the state." This provision has been carried through Section 182 of the Revised Codes of Montana of 1921, and the amendments thereof in Section 1, Chapter 85, Laws of 1923, and the identical language is used in House bill 289, amending the act in question. It thus appears that since 1909 there has been no amendment of the act in the particular under consideration. Since that time there has been established the industrial accident fund (Section 3011 R.C.M. 1921, enacted as Section 40, Chapter 96, Laws of 1915), which provides that "all earnings made by the Industrial Accident Fund by reason of interest paid for the deposit thereof or otherwise shall be credited to and become a part of said fund, \* \* \*."

The question arises, does the amendment in question as set forth in House bill 289 repeal the provisions of code Section 3011 by implication? Repeal of a statute by implication is not favored by the courts.

State ex rel. Metcalf v. Wileman, 49 Mont. 436, 143 Pac. 365;

Penwell v. Board of Co. Comrs., 23 Mont. 351, 59 Pac. 157;

State ex rel. Wynne v. Quinn, 40 Mont. 472, 107 Pac. 506.

Section 93 R.C.M. 1921 provides:

"Where a section or a part of a statute is amended, it is not to be considered as having been repealed and reenacted in the amended form, but the portions which are not altered are to be considered as having been the law from the time when they were enacted, and the new provisions are to be considered as having been enacted at the time of the amendment."

The provisions of Section 3011 are those of an act special in character.

Applying the above rules of construction to the question at hand, you are advised that the provisions contained in House bill 289 relative

to crediting interest did not change Section 183 R.C.M. 1921 insofar as the crediting of interest is concerned, and this provision remains the same as it has existed since 1909. Under Section 93 R.C.M. 1921, above quoted, this part of the amendatory statute, which did not alter the provisions of the amended statute, is to be considered as having been the law from the time it was first enacted, to-wit, 1909, and not a new enactment upon the subject; that the statute enacted in 1915 relative to the industrial accident fund was a special law dealing with a special subject and this special act providing for the crediting of interest controls the provisions of said Section 183 and the amendment of said Section 183 at this time in other particulars, but not as to the crediting of interest leaves the law upon this subject as it was prior to the enactment of said House bill 289. The interest, therefore, on the industrial accident fund should be credited to that fund as provided by Section 3011 R.C.M. 1921.

Interest on the general fund, of course, under the provisions of House bill 289 goes to the general fund.

As to the hail insurance fund, all interest and earnings of such fund are to be credited to the several funds thereof, under the provisions of Section 355 R.C.M. 1921, as amended by Section 8, Chapter 40, Laws of 1923. (See also Opinions of Attorney General, Vol. 12, 227). The hail insurance law was enacted in 1917, and the above reasoning with reference to the right of the industrial accident fund to its own interest and earnings applies precisely to the hail insurance fund.

As to the common school interest and income fund, vocational rehabilitation fund, and vocational educational fund, we find no provisions of law requiring that the interest on such funds shall be paid by the treasurer to such several funds.

With reference to the common school interest and income fund the state constitution provides as follows in Article XI, Section 5, thereof:

“Ninety-five per centum (95%) of all the interest received on the school funds of the state, and ninety-five per centum (95%) of all rents received from the leasing of school lands and of all other income from the public school funds, shall be apportioned annually to the several school districts of the state in proportion to the number of children and youths between the ages of six (6) and twenty-one (21) residing therein, respectively, but no district shall be entitled to such distributive share that does not maintain a public free school for at least six months during the year for which such distribution is made. The remaining five per centum (5%) of all the interest received on the school funds of the state, and the remaining five per centum (5%) of all the rents received from the leasing of school lands and of all other income from the public school funds, shall annually be added to the public school funds of the state and become and forever remain an inseparable and inviolable part thereof.”

You are accordingly advised that all such funds are entitled to all

interests on deposits therefrom, the statute being inoperative as against the constitutional provision.

As to the vocational rehabilitation fund and vocational educational fund, these funds are, insofar as they are received from the federal government, trust funds and by the provisions of the Federal Acts (Chapter 20, U.S.C., Act Feb. 23, 1917, 39 Sta. 929 and 38 U.S.C. 532, et seq.), are to be used only for the purposes in such acts set forth. Such purposes do not contemplate the deposit of the funds for the benefit of the general fund of the state. Also it is a general rule of law that a trustee is not permitted to profit by his trust and must account for and is chargeable with all interest received by the deposit of such moneys. (In re Eakins' Estate, 64 Mont. 84).

You have further orally requested an opinion as to what disposition should be made of the proceeds of the Veterans' Memorial fund. Section 1, Chapter 60, Laws of 1929, provides:

"That from and after the first day of March, 1929, the interest on daily balances of all moneys which are deposited by the State Treasurer as required by law belonging to the Veterans' Memorial Fund shall be credited to and belong exclusively to such Fund."

The reasoning in the case of the industrial accident fund and the hail insurance fund applies to this section, and you are advised that the interest received on daily balances of such fund should be credited thereto and not to the general fund.

Very truly yours,

L. A. FOOT,  
Attorney General.

By T. H. MacDonald, Assistant.