

### Opinion No. 89

#### State Board of Dental Examiners— Funds—State Treasurer—Books and Accounts—State Examiner.

HELD: Funds of the State Board of Dental Examiners need not be deposited with the State Treasurer.

It is not the duty of the state examiner to examine the books and accounts of the State Board of Dental Examiners.

February 25, 1933.

You have asked for an opinion on the following questions:

"Should the funds of the State Board of Dental Examiners be deposited with the State Treasurer?"

"Is it the duty of the State Examiner to examine the books and accounts of the State Board of Dental Examiners?"

"If an examination is made, should the Board of Dental Examiners pay a fee for such examination?"

I find no provision in the statutes which provides for the deposit with the state treasurer of funds of the State Board of Dental Examiners. The statute seems to provide, however, for the deposit of such funds with a secretary-treasurer to be elected or selected by the Board of Dental Examiners, who shall furnish such bond as the board may designate.

Section 3106 R. C. M. 1921, among other things, provides: "A board of dental examiners, to consist of five practicing dentists, is hereby created, whose duty it shall be to carry out the purposes and enforce the provisions of this act. \* \* \*" Section 3107 pro-

vides as follows: " \* \* \* Said board shall at its annual meeting choose from its members a president, vice-president, secretary, and a judiciary committee; it shall meet at least once each year, and as much oftener, and at such times and places, as may be necessary. The secretary and treasurer shall give such bonds as the board may designate. \* \* \*".

Section 3114, among other things, states: " \* \* \* No part of the compensation or other expenses of the said board shall be paid out of the state treasury. The fees coming into the treasury of said board shall be paid out upon the warrant of the president and the secretary thereof, in payment of the compensation and expenses of said board in carrying out the provisions of this act. \* \* \*".

I find no provision in the statutes of the state to the effect that it is the duty of the state examiner to examine the books and accounts of the State Board of Dental Examiners.

Section 210 R. C. M. 1921 as amended by Chapter 78 of the Laws of 1923, provides for the examination of books and accounts of certain officers, state and county, and contains the following:

" \* \* \* and all other state officers and boards whether temporary or permanent, however created and for whatever purpose, having the control, management, collection or disbursement of any **public moneys** of any character or description".

In 22 R. C. L. 222, Section 1, "public funds" are defined as "those moneys belonging to the state and its subdivisions, or to a municipal corporation of a state".

In 50 C. J. 854, Section 40, under the title of "Public Funds", the following definition appears:

"The term 'public funds' means funds belonging to the state or to any county or political subdivision of the state; more specifically taxes, customs, moneys, etc., raised by the operation of some general law, and appropriated by the government to the discharge of its obligations, or for some public or governmental purpose; and in this sense it applies to the funds of every political division of

the state wherein taxes are levied for public purposes. The term does not apply to special funds, which are collected or voluntarily contributed, for the sole benefit of the contributors, and of which the state is merely the custodian."

In *State v. Olson*, (N. D.) 175 N. W. 714, it was held that money which was accumulated in the manner prescribed by law for payment of claims allowed by the workmen's compensation bureau, was a special fund and not a public fund. The court said it was in no sense public money. Likewise in *State ex rel. Sherman v. Pape*, 174 Pac. 468, it was held that funds collected from assessments on private forest land for fire protection, are not public funds but are trust funds. The term "public funds" is also defined in a note in 40 Am. Eng. Ann. Cas. 1239. In this note the authorities are collected defining "public funds" to the same effect.

It is my opinion, therefore, that the money collected by the State Board of Dental Examiners and deposited with the secretary-treasurer selected by said board, is not public moneys within the meaning of the statute above referred to and that therefore there is no duty in the State Examiner to examine the books and accounts of such secretary-treasurer. This being our opinion, it is unnecessary to answer the third question submitted above.