

Opinion No. 53.

State Funds—Appropriation of—State University—Fees and Collections.

HELD: Only such fees as are specified in subdivision 3, Section 194, R. C. M., 1935, may be deposited in the State Treasury to the General Fund. Funds placed in the general fund should be appropriated in a specific amount. Trust funds, such as are specified in Section 194, R. C. M., 1935, may be appropriated by the Legislature in blanket form, in language such as, "In addition, all fees and collections are hereby appropriated."

February 27, 1937.

Hon. Robert Pauline
The Senate
Capitol Building

Dear Senator Pauline:

You have requested an opinion as to the constitutionality of Section 194, R. C. M., 1935, together with other questions therein submitted.

Subdivision 1 of said section provides for the appropriation of funds from endowments and land grants; subdivision 2, the fees and earnings of every state institution, and subdivision 3, in part, provides for contributions from public or private bounty. Part of subdivision 3 also provides that all income from fees and earnings of each and every of such state institutions, from whatever source they may be derived, other than as hereinbefore specified, shall be deposited by the state treasurer to the credit of the general fund. Section 12, Article XI of the State Constitution, provides:

"The funds of the state university and of all other state institutions of learning, from whatever source ac-

cruing, shall forever remain inviolate and sacred to the purpose for which they were dedicated. The various funds shall be respectively invested under such regulations as may be prescribed by law, and shall be guaranteed by the state against loss or diversion. The interest of said invested funds, together with the rents from leased lands or properties shall be devoted to the maintenance and perpetuation of these respective institutions."

Under this section only such fees as are specified in the language used in subdivision 3 of Section 194, are to be deposited in the state treasury and in the general fund, the theory being that these funds are not a trust fund as provided for in the article of the Constitution quoted, and the legislature would have no authority to deposit any of the trust funds such as permanent endowments and funds received from land grants, in the general fund because these funds are a trust fund and must be used for the purpose of that trust. The legislature, if it proposes to amend the above section, must be cautious and not go further than the section now makes provision for; otherwise, it would be in violation of the Constitution. All funds placed in the general fund in the state treasury should be appropriated in a specific amount in the same form and nature as any other appropriation upon the general fund. However, in reference to all trust funds such as come under subdivision 1 of Section 194, may be appropriated in a blanket form by the use of language you have suggested; "In addition all fees and collections are hereby appropriated."

You have advised this office that this information is very urgent and in the short time that I have had to investigate this matter I have not had an opportunity to make as careful a search of this question as I should like, but, in the time I have been able to devote to the matter, I have come to the conclusion that Section 194 is a valid and constitutional law but that any amendments, particularly in placing any of these funds in the general fund, should not go further than the present law, as contained in Section 194; otherwise, they would be in conflict with the constitutional provision I have just quoted.