

may be remitted direct to the State Treasurer to be credited to the "Trade Stimulator Use Tax Fund";

That claims presented to the State and approved by the State Board of Examiners, chargeable to said fund, must be paid on warrants drawn by the State Auditor against said fund;

That each thirty days, the balance in said fund must be deposited to the credit of the State General Fund;

That the State Board of Equalization must set up and keep appropriate records to reflect the supply, deposits, purchasers, purchases, and movements of such Use Tax Stamps and payments therefor.

April 7, 1947

Mr. W. A. Brown
State Examiner
State Capitol
Helena, Montana

Dear Mr. Brown:

You have requested my opinion on the following:

For accounting practices we would like to have your opinion as to whether or not the collections made by the County Treasurers for the sale of Tax Stamps can be remitted, along with other State remittances at the end of each month's business, to the credit of a "Trade Stimulator Use Tax Fund", instead of the County Treasurers remitting the said monthly collections direct to the State Board of Equalization. The handling of these collections by the County Treasurers and State Treasurer would simplify accounting procedures, and also would make the collections and accounting for the proceeds the responsibility of bonded and constitutional officers of tax collections.

The law provides the expenses of said Act shall be paid out of the collections of the Stamp Sales, upon claims presented and approved by the State Board of Examiners. In order to handle this matter we would like to have your opinion whether or not the

Opinion No. 21

**Trade Stimulator Use Tax Fund—
Use Tax Stamps—Tax Stamps**

Held: That the Board of Equalization, through the State Examiner, may provide for the setting up of a fund with the State Treasurer to be designated, "Trade Stimulator Use Tax Fund";
That proceeds from the sale of stamps by the several County Treasurers and the Board,

payments for expenses can be made from the "Trade Stimulator Use Tax Fund", and the remainder of the proceeds then credited to General Fund of the State, upon proper order from the State Board of Equalization.

Section 2 of Chapter 298, Laws of 1947, (Substitute House Bill 268), insofar as pertinent here provides:

"The State Board of Equalization is hereby authorized, empowered and directed to provide such Use Tax Stamps, in such design, title forms and denominations as will be appropriate, and to collect the moneys therefor, and shall every thirty (30) days, remit the proceeds from the sale of such Use Tax Stamps to the State Treasurer for credit to the State General Fund, provided, however that out of said proceeds there shall be paid on claims regularly presented against the State, and approved by the State Board of Examiners, the cost of enforcing and the expenses of administering the provisions of this act . . . to supply Use Tax Stamps upon direct application from exhibitors and payment to the Board . . . may deposit such stamps with the County Treasurer of any county, and it shall be the duty of the the County Treasurer to accept payment for said stamps and remit therefor to the State Board of Equalization at intervals fixed by said Board . . . The State Board of Equalization shall cause to be set up appropriate records to reflect the supply, deposits, purchaser, purchases, and movements of such Use Tax Stamps and payments therefor. . ."

Under your recommended proposed accounting system, a fund would be set up in the State Treasurer's Office to be designated "Trade Stimulator Use Tax Fund." County Treasurers would remit collections to the State Treasurer to the credit of this fund. In like manner, collections made direct by the State Board of Equalization would be deposited with the State Treasurer to the credit of said fund. Then, warrants for the payment of expenses of administration of the Act would be drawn against said fund upon claims approved by the State Board of Examiners. Each thirty

days, the State Treasurer, at the direction of the State Board of Equalization, would transfer from this fund to the general fund all money remaining after expenses have been paid.

Since the Act requires the Board to pay "out of the proceeds, on claims regularly presented against the State and approved by the State Board of Examiners, the cost of enforcing and the expenses of administering the provisions of this act", the claims would necessarily have to be paid before the proceeds are deposited to the credit of the General Fund. The claims must be paid by warrant drawn by the Auditor on the Treasurer. To this extent, the provisions of Chapter 298 are ambiguous.

In the case of *In re Farrell*, 36 Mont. 254, 262, 92 P. 785, the Supreme Court of Montana said:

"It may be laid down as a general principle that the limit of the powers of a public officer is the statute conferring the power, and what further power is necessarily implied in order to effectuate that which is expressly conferred. In the performance of ministerial duties expressly enjoined, however, when the mode of performance is prescribed, no further power is implied, nor has the officer any discretion. He must strictly pursue the statute."

As to the power and duty of the State Board of Equalization to collect the proceeds, pay the expenses of administering the act, keep appropriate records, etc., and deposit the balance to the credit of the General Fund the Act is clear and unambiguous. But as to the method of procedure to effectuate such powers or duties, the act is ambiguous. The Board must, therefore, exercise what implied powers are necessary to accomplish the purpose.

The Supreme Court of Montana, in the case of *Guillot v. State Highway Commission, et al*, 102 Mont. 149, 153, 56 P. (2d) 1072, on this point said:

"But the powers which an officer, commission or department may exercise are not confined to those expressly granted by the Constitution or statutes of the state. In addition to powers expressly conferred

upon him by law, an officer has by implication such powers as are necessary for the due and efficient exercise of those expressly granted, or such as may be fairly implied therefrom. But no power will be implied other than those which are necessary for the effective exercise and discharge of the powers and duties expressly conferred."

Here it is clear that—in order to effectively exercise and discharge the powers and duties expressly conferred on the Board of Equalization in the administration of Chapter 298—the Board necessarily must assume the implied power and duty to provide a system or procedure not specifically provided in the act, but necessarily implied therein. The system or procedure you propose in my opinion comes within the implied powers and duties of the Board of Equalization.

It is therefore my opinion:

1. That the Board of Equalization, through the State Examiner, may provide for the setting up of a fund with the State Treasurer to be designated, "Trade Stimulator Use Tax Fund";
2. That proceeds from the sale of stamps by the several County Treasurers and the Board, may be remitted direct to the State Treasurer to be credited to the "Trade Stimulator Use Tax Fund";
3. That claims presented to the State and approved by the State Board of Examiners, chargeable to said fund, must be paid on warrants drawn by the State Auditor against said fund;
4. That each thirty days, the balance in said fund must be deposited to the credit of the state General Fund;
5. That the State Board of Equalization must set up and keep appropriate records to reflect the supply, deposits, purchasers, purchases, and movements of such Use Tax Stamps and payments therefor.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General