

Opinion No. 10**Highway Trust Funds—State Treasurer—State Auditor—Special Funds**

- Held:**
1. That it is the duty of the state treasurer to receive grants of money, to the state of Montana, under any act of Congress.
 2. That a trust fund account may be set up for Federal moneys allocated to Montana for a limited purpose and such moneys may be expended by claims certified by the state highway engineer, approved by the board of examiners and paid upon warrants drawn by the state auditor.
 3. It is the duty of the state treasurer to deposit all public funds in solvent banks and highway trust funds may be deposited in a special account with appropriate designation in a solvent bank and be subject to audit by agents of the Federal Government.
 4. Warrants may be drawn by the state auditor and paid by the State treasurer against a special fund and such warrants may be so numbered and identified as to be distinguished from all other warrants issued by the state auditor for convenient audit of the trust fund against which such warrants are drawn.

April 11, 1957

State Highway Commission
State Highway Building
Helena, Montana

Gentlemen:

You have requested my opinion concerning the authority of the state treasurer to receive as trust moneys, funds advanced by the United States Government under Section 6 of the Federal-Aid Highway Act of 1944, as amended, to enable your department to make prompt payment for acquisitions of right-of-way and for construction as it progresses. You advise me that the funds are to be disbursed only upon vouchers approved by the State Highway Department. You asked in particular:

1. If the treasurer may accept and set up a separate account for this purpose.
2. If the bond of the treasurer will cover any loss suffered by the fund.

Section 79-201, Revised Codes of Montana, 1947, makes it the duty of the state treasurer to receive all moneys belonging to the state. Section 79-210, R.C.M., 1947, deals more specifically with your problem and reads as follows:

"The state treasurer of the state of Montana is hereby designated as the fiscal officer of the state to receive from the United States government, or any of its agencies, any and all funds which may be made available as a grant or grants to the state of Montana under any act of Congress, or otherwise, for any purpose or use whatsoever. The state treasurer is hereby authorized, empowered and directed, upon receipt of any such fund or funds, to deposit the same in the proper fund in the state treasury."

This statute makes it the duty of the state treasurer to accept and administer special funds such as the one contemplated in your letter to me.

Under the provisions of Section 32-1619, R.C.M., 1947, two funds were set up for the use of the highway commission. These funds are the state highway fund and a state highway trust fund. This statute provides in part "the state highway trust fund shall be credited with all moneys received from the county, and from the Federal Government or other agencies for expenditure by the commission in connection with the actual construction of specific projects." The manner of presenting claims and expending the money is set out in Section 32-1620, R.C.M., 1947, which reads as follows:

"PRESENTATION AND PAYMENT OF CLAIMS. All accounts and expenditures shall be certified by the state highway engineer, approved by the state board of examiners, and paid by the state

treasurer upon warrants drawn by the state auditor out of the proper funds created by this act. In submitting claims for payment as herein provided, the state highway commission shall certify whether the warrant is to be drawn against the state highway fund or the state highway trust fund, and if the claim is against the state highway trust fund, it shall state the particular project to which the payment will apply. The state treasurer is hereby authorized to receive all warrants drawn by the United States government in accordance with the provisions of any act of Congress, and to credit the same to the state highway trust fund.

The state highway commission shall provide a system of accounting for each project considered which shall show the amount of money received therefor, and also an itemized statement of the expenses in connection therewith. Such system shall be approved by the state board of examiners."

In the above quoted statute it is made the duty of the state auditor and the state treasurer to provide separate accounts for trust funds and to so designate these funds that they will not be co-mingled with any other funds and will be kept intact.

The memorandum from the commissioner of public roads which was submitted with your request, states that the funds advanced must be kept in a separate account by the treasurer and deposited in a special account in a financial institution. It is the duty of the state auditor under Section 79-101, R.C.M., 1947, to keep all accounts between the state and the state treasurer and also to draw all warrants and designate the fund against which the warrants are drawn. Section 79-201, R.C.M., 1947, makes it the duty of the state treasurer, "To keep separate accounts of the different funds." From these statutes it is apparent that a separate and independent account may be set up to handle the funds advanced by the Federal Government as described in your letter.

The memorandum you submitted from the public roads requires that the funds advanced be deposited in a financial institution in a separate account and not be co-mingled with funds of the state of Montana. It is the duty of the state treasurer under Section 79-301, R.C.M., 1947, to deposit public moneys in his possession in solvent banks and such depository banks must give security for such deposits in excess of the amount guaranteed or insured according to law. Such provision assures the safety of the deposit and the previously quoted statute would permit the segregation of the fund and an identifying number or name so that it can be readily audited. It would be in the interest of the bank in which the funds were deposited to agree to certify the balance in the fund and authorize an audit as required by the commissioner of public roads.

The bond of the state treasurer is fixed at the sum of \$200,000 by Section 79-809, R.C.M., 1947, and the bond of the state auditor is in the sum of \$10,000 as required in Section 79-107, R.C.M., 1947. The

bond of an official, under Section 6-311, R.C.M., 1947, is liable for the defaults of "the principal officer, his deputy, or clerk."

It is therefore my opinion:

(1) That it is the duty of the state treasurer to receive grants of money, to the state of Montana, under any act of Congress.

(2) That a trust fund account may be set up for Federal moneys allocated to Montana for a limited purpose and such moneys may be expended by claims certified by the state highway engineer, approved by the board of examiners and paid upon warrants drawn by the state auditor.

(3) It is the duty of the state treasurer to deposit all public funds in solvent banks and highway trust funds may be deposited in a special account with appropriate designation in a solvent bank and be subject to audit by agents of the Federal Government.

(4) Warrants may be drawn by the state auditor and paid by the state treasurer against a special fund and such warrants may be so numbered and identified as to be distinguished from all other warrants issued by the state auditor for convenient audit of the trust fund against which such warrants are drawn.

Very truly yours,
FORREST H. ANDERSON
Attorney General