

VOLUME NO. 34

Opinion No. 2

UNIVERSITY SYSTEM - Deposit of funds; State Treasurer; Deposit of funds. Sections 79-201, 79-306, 79-601 and 79-603, R.C.M. 1947.

HELD: All moneys received or collected by the Montana university system from any source whatsoever are required to be deposited in the state treasury except as otherwise provided by statute.

March 22, 1971

Mr. Morris L. Brusett
Legislative Auditor
State Capitol
Helena, Montana 59601

Dear Mr. Brusett:

You have requested my opinion as to whether the existing statutes and constitutional provisions require the deposit in the state treasury of all moneys received or collected by the units of the Montana university system.

You cited the following statutory provisions: Sections 79-201, 79-306, and 79-601, Revised Codes of Montana, 1947. In summary they provide for the deposit of all moneys in the state treasury unless otherwise provided. Section 79-603, R.C.M. 1947, which was not cited in your letter, provides several exceptions. It reads as follows:

“The state controller may in his discretion permit any state institution to retain in its possession, under such conditions as the state controller may prescribe, incomes from dormitories conducted by state institutions, and moneys deposited in trust by students, members, inmates or other persons, which may be subject to refund to the depositors on demand or otherwise. The state controller may cancel such permission and require the deposit of any or all such funds with the state treasurer at his pleasure; provided, however, that the state treasurer, with the consent of the state depository board, shall designate depositories for such funds and securities sufficient to adequately and properly secure the amounts deposited in said depositories.”

The exceptions to the deposit of all moneys in the state treasury set forth in section 79-603, R.C.M. 1947, need not create a chaotic money management situation, since the state controller is vested with discretionary authority.

The intent of the legislature to require the deposit of all moneys with certain exceptions in the state treasury is supported by the wording of House Bill No. 599, Session Laws of 1969, which was the general appropriation bill for personal services, operation and capital expenditures for the Montana university system. Section 3 provides:

“Unless otherwise provided in this act, all monies received or collected from any source whatsoever by the units named in the act shall be deposited in the state treasury and credited to the proper fund.”

The requirement that university moneys be deposited in the state treasury is further strengthened by several provisions of the higher education laws. Section 75-104, R.C.M. 1947, provides that the state treasurer shall be the treasurer for the board of education, ex officio regents. Section 75-508, R.C.M. 1947, provides that the income from certain enumerated funds is to be placed at the disposal of the state board of education by transfer to the treasurer of said board.

Section 79-601, R.C.M. 1947, provides:

“For the support and endowment of each and every of the state institutions of the state of Montana now existing or hereafter to be created there is annually and perpetually appropriated respectively:

“1. The income from all permanent endowments, and from all land grants as provided by law. **All moneys received or collected by all higher educational institutions**, reformatory, custodial and penal institutions, state hospitals, and sanitariums, **for any purpose whatever**, except such as may have been heretofore pledged to secure the payment of principal and interest of bonds issued in connection with the construction of buildings, or which may constitute temporary deposits, all or part of which may be subject to withdrawal or repayment, **shall be paid over to the state treasurer** who shall deposit the same to the credit of the proper fund.” (Emphasis supplied)

In addition, two of the stated purposes of the Treasury Fund Structure Act, chapter 4, Title 79, R.C.M. 1947, which was passed in 1963, were to provide the legislative assembly with a greater measure of control over public moneys, and to enable the financial records of the state to accurately reflect government costs and revenues. By requiring the deposit in the state treasury of all moneys received or collected by the units of the Montana university system the purposes of the aforementioned act will be met.

You have advised that your audit of the university system revealed that most of the moneys which are presently not reflected in the state treasurer's books could be classified as agency fund moneys. Section 79-410 (9), R.C.M. 1947, provides in part:

“(9) The agency fund consists of moneys deposited in the state treasury which are held and disbursed by the state as a custodian or agent, and includes, but not limited to moneys held for the purpose of paying insurance or retirement benefits, moneys arising from lost or unclaimed property, and other moneys of a similar nature.”

Section 79-415, R.C.M. 1947, provides moneys deposited in the

agency fund may be paid out of the treasury under general laws, or contracts entered into in pursuance of law. Therefore, moneys deposited with the state treasurer that consist of agency fund moneys do not require legislative appropriation for their expenditure.

THEREFORE, IT IS MY OPINION that the legislature intended to require the deposit of all moneys received or collected by units of the Montana university system in the state treasury subject, however, to certain exceptions set forth by statute.

Very truly yours,

ROBERT L. WOODAHL
Attorney General