

3104

RECEIPTS AND EARNINGS ACCRUING TO THE COMMISSION FOR THE BLIND MUST BE DEPOSITED IN THE STATE TREASURY AND NOT A BANK ACCOUNT—§5109.01, R. C., §5109.09, R. C., §131.01, R. C., §131.05, R. C., ASHB 390, 104th G. A.

SYLLABUS:

Receipts and earnings accruing to the commission for the blind under Sections 5109.07 and 5109.09, Revised Code, must be deposited in the state treasury, and the commission is without authority to place such funds in bank accounts.

Columbus, Ohio, June 28, 1962

Mrs. Mary Gorman, Department of Public Welfare  
408 East Town Street, Columbus 15, Ohio

Dear Mrs. Gorman:

Your request for my opinion asks whether receipts and earnings accruing to the commission for the blind may be placed in bank accounts

established by the commission in lieu of depositing same in rotary accounts in the state treasury.

Section 5109.01, Revised Code, dealing with the commission for the blind, reads as follows:

“There shall be a board known as the commission for the blind, consisting of seven members, one of whom shall be the superintendent of the state school for the blind and six of whom, including at least one blind person, shall be appointed by the governor. Each year the governor shall appoint a member of the commission who shall hold office for a term of six years.

“The commission shall be a part of the department of public welfare for administrative purposes. The president of the commission shall act as general secretary of the commission; but the director of public welfare may designate employees of the department to assist such secretary in the performance of the detailed duties of his position. The director is the executive officer of such commission. All clerical and other administrative agencies for the execution of the powers and duties vested in the commission are a part of the department, and the employees of the commission are employees of said department.”

Section 5109.07, Revised Code, authorizes the commission to “establish, equip, and maintain schools for industrial training and workshops for the employment of suitable blind persons” and to “devise means for the sale and distribution of the products thereof.” Referring to funds received under such sale and distribution, Section 5109.09, Revised Code, provides:

“In furtherance of sections 5109.01 to 5109.11, inclusive, of the Revised Code, the commission for the blind may use any receipts or earnings that accrue from the operation of industrial schools and workshops. A detailed statement of receipts or earnings and expenditures shall be made monthly to the auditor of state.”

As to what moneys are to be paid into the state treasury, Section 131.01, Revised Code, reads in part:

“On or before Monday of each week, every state officer, state institution, department, board, commission, and every college or university receiving state aid shall pay to the treasurer of state all moneys, checks, and drafts received for the state, or for the use of any such state officer, state institution, department, board, commission, or college or university receiving state aid, during the preceding week, from taxes, assessments, licenses, pre-

miums, fees, penalties, fines, costs, sales, rentals, or otherwise, and file with the auditor of state a detailed, verified statement of such receipts. \* \* \*

Also, Section 131.05, Revised Code, reads as follows:

“Every state officer, state institution, department, board, commission, or college or university, receiving fees or advances of money, or which, under Section 131.01 of the Revised Code, collects or receives fees, advances, or money, shall deposit all such receipts to the credit of the state depository trust fund, when such receipts may be subject to refund or return to the sender, or when such receipts have not yet accrued to the state. Such deposits shall be made within forty-eight hours of their receipt, in case of an office, institution, department, board, or commission located at Columbus, and within six days, in case such office, institution, department, board, or commission is not located at Columbus.”

The commission for the blind is undoubtedly a state “commission” within the purview of Sections 131.01 and 131.05, *supra*, and moneys received under Section 5109.07, Revised Code, would appear to be received from “\* \* \* sales \* \* \* or otherwise \* \* \*.” On the other hand, the specific language of Section 5109.09, *supra*, might be interpreted by some to mean that the commission is not required to deposit the receipts and earnings in question in the state treasury under either Section 131.01 or Section 131.05, *supra*, such Section 5109.09, constituting an exception to the provisions of those sections.

Since Section 5109.09 states that the commission “may use” the receipts or earnings, it might be argued that the intent was to allow the commission to retain control of such receipts or earnings, and that such could then be expended without an appropriation by the legislature. The fact that a monthly detailed statement must be made to the auditor of state strengthens this argument to some extent. Under Section 131.01, *supra*, such a statement must be filed with the auditor each week, thus if said section 131.01 is applicable to the funds in question, one might ask why provision for a monthly statement was inserted in Section 5109.09, *supra*.

While under the sections above discussed there might thus be some doubt as to the proper disposition of the funds in question, where there is a doubt as to the existence of a power, the doubt is resolved against it (*State ex rel., Laher v. Menning*, 95 Ohio St., 97). In any event, however, the question appears to be resolved by the language contained in the

appropriation acts covering the years 1961-62, 1962-63, under which language the intention of the legislature as to those funds appears clear.

Amended Substitute House Bill No. 390, which makes appropriations for the fiscal year 1961-1962, contains the following provision :

“The term ‘rotary’ as used in this act, and unless the context otherwise requires, includes all rotary funds established by law or by action of the controlling board and also means and includes a working capital fund in whole or in part derived from a function or activity of an institution and set aside to establish or enable the department or institution to carry on such function or activity.

“Money obtained from the function or activity for which a rotary fund, which is continued by this act, is provided shall be turned into the state treasury and such moneys so turned into the treasury between July 1, 1961, and the period covered by this act are hereby appropriated for the purpose for which such rotary fund is now maintained, provided that the director of finance shall have power to designate which moneys collected by any agency for which a rotary fund is established by this act shall be paid into such rotary fund and also to determine what obligations may be charged against and paid from such rotary fund, except as provided by permanent law. All expenditures from rotary funds for personal service shall be so classified.

(See Section 16 of Amended Substitute House Bill No. 309, and Section 15 of Amended House Bill No. 1123.)

Amended House Bill No. 1123, which makes appropriations for the fiscal year 1962-1963, contains a similar provision.

Further, both of the bills in question establish a rotary for the funds in question. Amended Substitute House Bill No. 390 contains the following language :

“Rotary

“The balances in the following rotary funds on June 30, 1961, and all receipts accruing thereto during the period covered by this act are hereby appropriated for the authorized uses and purposes of the fund.

“Manufacturing—pursuant to sections 5109.07 and 5109.09 of the Revised Code.

“\* \* \*

\* \* \*

\* \* \*”

Amended House Bill No. 1123 contains identical language except that it refers to balances as of June 30, 1962.

In view of the language of the above—noted appropriation bills, it is the obvious intent of the legislature that the funds here in question are rotary funds which must be deposited in the state treasury and which can be spent only when appropriated by the legislature. I might further note that similar language has appeared in the various appropriation bills over the years (1953, 1955, 1957, 1959, for example).

In conclusion, therefore, it is my opinion and you are advised that receipts and earnings accruing to the commission for the blind under Sections 5109.07 and 5109.09, Revised Code, must be deposited in the state treasury, and the commission is without authority to place such funds in bank accounts.

Respectfully,

MARK McELROY

Attorney General