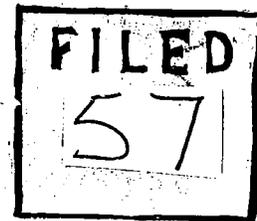


DIVISION OF HEALTH:
FUNDS: VITAL STATISTICS:

All funds received by the Division of Health must be deposited in the state treasury.



March 29, 1950

Honorable Samuel Marsh
Director, Department of Public
Health and Welfare
Jefferson City, Missouri

Dear Sir:

I.

We received a request from you for an opinion from this department upon the following statement of facts:

"During the interval between the death of Dr. Adams and the appointment of a new division director for the Division of Health, I assumed direct supervision over the Division of Health.

"One of the items that came to my notice was that for many years the Directors of the Division of Health have entered into contracts on an individual basis with the National Office of Vital Statistics of the United States Public Health Service of the Federal Security Agency in Washington, D.C. to furnish certain data from the records of the Bureau of Vital Statistics of the State Division of Health.

"Under these contracts the funds received for that service were deposited in a checking account in the Central Missouri Trust Company in the individual name of the division director, and out of that fund the division director paid the salaries of certain employees who were engaged by the Division Director to do the necessary work to fulfill the contract with the Federal Agency.

"When this contract came up for renewal Dr. Adams, the then Director of the Division of Health, signed the contract as follows:

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"Missouri Division of Health
C. F. Adams, M.D., Acting Director"

"However he continued to maintain the account in the Central Missouri Trust Company, but the name of the account was changed from Dr. R.M. James, Agent, to Missouri Division of Health, C. F. Adams, M.D., Director. Dr. Adams continued to pay the salaries of the employees who were doing the work out of this account, but these particular employees were never brought under the State Merit System Law."

"I would like your opinion as to how these funds should be handled."

II.

The Constitution of 1945, Article III, Section 36 provides, in part, as follows:

"All revenue collected and money received by the state shall go into the treasury and the general assembly shall have no power to divert the same or to permit the withdrawal of money from the treasury except in pursuance of appropriations made by law. All appropriations of money by successive general assemblies shall be made in the following order:"

* * * * *

The Constitution of 1945, Article IV, Section 28, provides as follows:

"No money shall be withdrawn from the state treasury except by warrant drawn in accordance with an appropriation made by law, nor shall any obligation for the payment of money be incurred unless the comptroller certifies it for payment and the state auditor certifies that the expenditure is within the purpose of the appropriation and that there is in the appropriation an unencumbered balance sufficient to pay it. At the time of issuance each such certification shall be entered on the general

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accounting books as an encumbrance on the appropriation. No appropriation shall confer authority to incur an obligation after the termination of the fiscal period to which it relates, and every appropriation shall expire six months after the end of the period for which made."

Section 22 of Article IV, Constitution 1945, provides that all taxes, licenses and fees payable to the state shall be collected by the Division of Collection of the Department of Revenue.

Section 9759.20 R.S.A., Laws 1945, page 945, Section 20, provides as follows:

"It shall be the duty of the division of health to have charge of the state system of registration of births and deaths; to prepare the necessary methods, forms and blanks for obtaining and preserving such records, and to insure the faithful registration of the same in the registration districts and in the central bureau of vital statistics at the capital of the state. The said division shall be charged with the uniform and thorough enforcement of the said law throughout the state and shall, from time to time, promulgate any additional forms and amendments that may be necessary for this purpose. Suitable provision shall be made, including fireproof vaults and filing cases, for the permanent and safe preservation of all official records and other matters pertaining to vital statistics for which the bureau of vital statistics may be responsible."

Section 9783.18, R.S.A., Laws 1947, Vol. 2, page 237, Section 19, provides that the fees charged by the state registrar for birth or death certificates shall be paid by the applicant to the State Department of Revenue.

The Supreme Court in the case of Moore v. Brown, 350 No. 256, 165 S.W. (2d) 657, held that Section 43 of Article IV of the Constitution of 1875 requires that all revenue collected and moneys received by the state from any source whatsoever shall go into the treasury and the General Assembly shall have no power to divert the same, or to permit money to be drawn from the treasury except in pursuance of regular appropriations made by law.

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The Supreme Court of Missouri in *Howell v. Division of Employment Security*, 215 S.W.(2d) 467, fully considered the provisions of the Constitution of 1945. In this case they held that the word revenue means the annual and current income of the state, however, derived, which is subject to appropriations for general public uses:

"* * *The annual and current income of the state, however derived, which is subject to appropriation for general public uses. This excludes such income as the Constitution, or any permanent existing law, may specifically devote to a special purpose, in contradistinction to a general public use, or which is not required to be paid into the state revenue fund but into a special fund. * * *"

Section 9735a R. S. Mo. 1939, provides as follows:

"The State Board of Health is hereby directed to comply with the provisions of any act of Congress providing for the distribution and expenditure of funds of the United States appropriated by Congress for Health purposes and to comply with any of the rules or conditions made by the United States Public Health Service, The Children's Bureau or any other Federal Agency in regard to health funds distributed to the states, and to comply with any of the rules and conditions made by said services or bureaus or other branches of the United States Government acting under the provisions of the Federal law in order to secure for the State of Missouri funds allotted to this state by the United States Government or health purposes under the provisions of such acts of Congress, relating to health; said funds shall be received by the State Treasurer and deposited in separate funds to be known as the United States Public Health Title VI fund, the Venereal Disease Control fund, the Children's

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Bureau fund, and any other fund specially designated by a Federal Agency for the use of the State Board of Health for health purposes, and to be paid out by the State Treasurer on requisitions drawn by the executive officers of the State Board of Health on a warrant of the State Auditor. Said funds being allotted to the State of Missouri for health purposes by the Federal Government the General Assembly shall appropriate the same to the use of the State Board of Health, under such provisions as are set out for the reception and use of funds by the Federal Government. Added Laws 1941, p. 170, Sec. 1."

This section was in force at the time of the making of the attached contract, to which you refer in your letter. Said section has been repealed by Senate Revision Bill No. 1051 and in lieu thereof Section 3 at page 972 of Laws 1945, has been substituted therefor in the revision laws. This revised section is not as broad as Section 9735a.

Section 6.060 of R.B. No. 27 of the 65th General Assembly provides as follows:

"In order to secure to the state federal funds allotted or available, the Director of the Division of Health, the State Comptroller, and the State Treasurer, respectively, are hereby authorized and directed to receive, deposit, expend and dispense any allotments, advancements, grants, or contributions of federal funds as United States Public Health Service Title VI funds, Venereal Disease Control Funds, Children's Bureau Title V, Part I, funds or any other federal health funds, for health purposes, and to comply with the provisions of any act of Congress, or with any rule, regulation or condition of any agency of the United States acting under the provisions of federal law providing for the allotment and expenditure of such funds; and should any such act, rule, regulation or condition require the deposit of any such funds in the State Treasury or in a trust fund or with the Division of Health, State Comptroller or Treasurer, as trustee, then the said Division of Health, State Comptroller and Treasurer are hereby authorized

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and directed to receive, deposit and expend such funds in the manner required by such act, rule, regulation or condition, and all such funds so deposited shall stand and are hereby appropriated to said Division of Health, State Comptroller and Treasurer to be applied in the manner and for the purposes set forth in such act, rule, regulation or condition. When required by such act, rule, regulation or condition, the State Auditor is hereby authorized and directed to audit and issue warrants for, the State Treasurer is hereby authorized and directed to receive, deposit and handle, as trustee or otherwise, any such funds and to pay out same, all in the manner required by such act, rule, regulation or condition; and for such purposes there is hereby appropriated all such federal funds so deposited in the State Treasury for the biennial period beginning July 1, 1949, and ending June 30, 1951, the amount hereby appropriated, being in addition to all other appropriations made by this act."

Section 6.060 of H.B. 27, quoted on page 5 of this opinion, provides that allotments, advancements, grants or contributions of federal funds stand appropriated to the Division of Health. If this provision of an appropriation Act were to be held valid the moneys involved under the attached contract still would not be allotments, advancements, grants or contributions of federal funds because the money is paid for services rendered, and therefore the section or statute cannot be construed to apply. Section 9735a, quoted above in this opinion, would not apply for the same reason, and also would not apply because it will be repealed effective April 14, 1950. The attached contract, in our opinion, provides that in return for so much money per name, to be paid by the federal government, the Missouri Division of Health agrees to perform certain services so that this contract is no different from any other contract that the state of Missouri might enter into with the federal government or any individual. The money paid for this service cannot be deemed to be a special fund allotted or allocated to Missouri and the Division of Health by the federal government.

But it is clear to us that under the constitutional provision cited above, it is the duty of the Division of Health to pay to the treasury of the state of Missouri the money received from the United States Public Health Service for said services

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in connection with this attached contract.

The responsibility to see that this payment is made rests upon you and the Director of the Division of Health.

CONCLUSION

It is the conclusion of this department that all monies received from the United States Public Health Service for data and information furnished to said federal government agency from the records of the Bureau of Vital Statistics of the Division of Health in accordance with the terms of the attached contract shall be deposited in the state treasury and that said monies are not appropriated by any existing law.

Respectfully submitted,

STEPHEN J. MILLETT
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

SJM:mw

Federal Security Agency
U. S. PUBLIC HEALTH SERVICE
National Office of Vital Statistics

Contract No. 40005

Date July 1, 1949

CONTRACT FOR MICROFILM

For and in consideration of the payment of three cents (\$0.03) for a complete positive microfilm copy of each birth, death, and stillbirth certificate furnished during the current fiscal year, in accordance with U.S. Public Health Service specifications as issued annually, the undersigned bidder offers and agrees to furnish to the United States Government, as represented by the U. S. Public Health Service, positive microfilm copies of certificates of births, deaths and stillbirths which will have occurred on or after January 1, 1946, in the State of Missouri.

It is understood that this agreement does not cover copies of certificates for which payment has been made; that the Government, upon 30 days' advance notice to the contractor, may renew the contract from fiscal year to fiscal year for a period not to exceed five (5) years under the terms and conditions herein specified; that the contract may be terminated at any time by either party upon 10 days' notice, that no Member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise therefrom unless it is made with a corporation for its general benefit; and that the contractor and any subcontractor shall not discriminate against any worker because of race, creed, color, or national origin.

Other exceptions and provisions: The undersigned bidder agrees to furnish positive microfilm copies of certificates of births, deaths and stillbirths occurring in 1948 for which payment has not been made.

State Office Bldg.
Bidder: Missouri Division of Health, Address: Jefferson City, Mo.
(Name of State agency)

By: s: C. F. Adams, M.D. Acting Director Division of Health
C. F. Adams, M.D.

ACCEPTED BY THE UNITED STATES
PUBLIC HEALTH SERVICE

Date July 1, 1949

By R. M. Harvey, Acting Chief, Office of Purchase and Supply
(Name and title of official)