

PURDUE UNIVERSITY: Duties of controller under the Indiana Public Depository Act of 1907.

February 28, 1933.

Hon. R. B. Stewart, Controller,
Purdue University,
Lafayette, Indiana.

Dear Sir:

I have before me your letter making certain inquiries concerning your duties under the Indiana Public Depository Act of 1907 and acts amendatory thereof and supplemental thereto, and the "State Sinking Fund for Public Deposits" Act of 1932, as applied to certain funds granted to the State of Indiana by the federal government for the use of Purdue University. The funds concerning which inquiry is made are the following:

Under the Morrill-Nelson Acts (1890 and 1907) for the university proper, annually.....	\$ 50,000
Under the Adams and Hatch Acts (1887 and 1906) for the Agricultural Experiment Station, annually	30,000
Under the Purnell act (1925) for the Agricultural Experiment Station, annually.....	60,000
Under the Capper-Ketcham Act (1928) for the department of agricultural extension, annually, approximately	30,000
Under the Smith-Lever Act (1914) for the department of agricultural extension, annually, approximately	120,000
Under the supplementary Smith-Lever Act (1919) for the department of agricultural extension, approximately	40,000
Under the federal co-operative extension fund (1930), annually	26,000

You submit the following questions:

1. May the interest on said funds be diverted to the "State Sinking Fund for Public Deposits" pursuant to chapter 33 of the Acts of 1932, providing for the creation of said fund?
2. If the interest is not to be diverted to the "State Sinking Fund for Public Deposit," are the funds nevertheless protected by the said state sinking fund?

I think it is very apparent, from an examination of the Indiana Public Depository Act of 1907, that it applies to all

funds "*belonging to the state coming into the possession of any state board, officer or state institution,*" (our italics). Burns Annotated Indiana Statutes of 1926, section 12615, and also to all "*state funds held by state schools or educational institutions, and all funds held by any state institutions now authorized to keep public funds on hands, in banks or trust companies, convenient to said officers or institutions.*" Burns Annotated Indiana Statutes of 1926, section 12629.

The answer to your first question, therefore, involves the consideration of the preliminary question as to whether the funds referred to by you come within any of the foregoing classifications.

As to the first fund referred to by you, the act of congress of August 30, 1890, provides in part as follows:

"That there shall be, and hereby is, annually *appropriated*, out of any money in the treasury not otherwise appropriated, arising from the sales of public lands, *to be paid* as hereinafter provided, *to each state and territory* for the more complete endowment and maintenance of colleges for the benefit of agriculture and the mechanic arts now established, or which may be hereafter established, in accordance with an act of congress approved July second, eighteen hundred and sixty-two, the sum of fifteen thousand dollars for the year ending June thirtieth, eighteen hundred and ninety, and an annual increase of the amount of such appropriation thereafter for ten years by an additional sum of one thousand dollars over the preceding year, and the annual amount to be paid thereafter to each state and territory shall be twenty-five thousand dollars to be applied only to instruction in agriculture, the mechanic arts, the English language and the various branches of mathematical, physical, natural and economic science, with special reference to their applications in the industries of life, and to the facilities for such instruction. . . ." (Our italics.)

26 U. S. Statutes at Large 417.

This act further provides in part that:

"If any portion of the moneys received by the designated officer of the state or territory for the further

and more complete endowment, support, and maintenance of colleges, or of institutions for colored students, as provided in this act, shall, by any action or contingency, be diminished or lost, or be misapplied, it shall be replaced by the state or territory to which it belongs, and until so replaced no subsequent appropriation shall be apportioned or paid to such state or territory. . . .”

26 U. S. Statutes at Large 418.

No provision is expressly made in the above act as to interest on said fund so appropriated.

The act of Congress of March 4, 1907, appropriating additional sums, provides that the above appropriation shall be increased annually by \$5,000 over the previous annual appropriation until the total annual appropriation reaches \$50,000 and that thereafter an annual appropriation of \$50,000 shall be made.

This act provides that:

“The sum hereby *appropriated to the states and territories* for the further endowment and support of the colleges *shall be paid* by, to and in the manner prescribed by the act of Congress approved August thirtieth, eighteen hundred and ninety, entitled ‘An act to apply a portion of the proceeds of the public lands to the more complete endowment and support of the colleges for the benefit of agriculture and the mechanic arts established under the provisions of the act of Congress approved July second, eighteen hundred and sixty-two, *and the expenditure of the said money shall be governed in all respects by the provisions of the said act of Congress approved July second, eighteen hundred and sixty-two,* and the said act of Congress approved August thirtieth, eighteen hundred and ninety. . . .’” (Our italics.)

34 U. S. Statutes at Large 1281-1282.

In view of the foregoing provisions of the acts of Congress referred to, do such funds when paid to the various states which have qualified to receive them, become state funds and belong to such states?

In the case of Massachusetts Agricultural College v. Marden, State Treasurer, et al. (Mass.), 30 N. E. 555, the court had before it the petition of the Massachusetts Agricultural College for a writ of mandate addressed to George A. Marden as treasurer and receiver general of the State of Massachusetts, to require him to pay to the petitioner the funds in his custody received from the federal government, pursuant to the foregoing act of Congress of August 30, 1890. The Massachusetts Institute of Technology was made a party and answered, claiming an interest in the fund. The court held that it was for the state to determine to which of two qualified colleges within the terms of the act of Congress, the fund was to be paid by the state treasurer, holding also that the fund might be apportioned between the two. This conclusion was based upon the further holding of the court, that such funds belonged to the State of Massachusetts and not to the colleges named. In the course of the opinion, the court used the following very pertinent language on page 557:

“The money in the hands of the treasurer and receiver general is the *property of the state*, held, under the law, for a particular use, and for no other. Whether the state has or has not power to control it in his hands otherwise than to direct the use of it in conformity with the act of Congress, it is clear that neither the state nor the respondent has a legal right to divert it; and that, if there are different ways in which it may be used under the provisions of the statute of the United States, the state alone, acting by its legislature, can choose between them.” (Our italics.)

Again on the same page, note the following:

“That the secretary of the interior, when he drew his warrant for the payment to the respondent, knew of but one college that could properly receive the money is immaterial; for the appropriation by Congress was to the state, and the payment to the respondent was for the use of the state, and the only limitation on the right of the state is to use it for the more complete endowment and maintenance of a college or of the colleges established in accordance with the act of 1862. The duty of the secretary was performed when he determined that the state was entitled to it, and drew his warrant for the payment of it.”

This case was decided on March 29, 1892. The same question as to conflicting claimants was before the court in the case of *Brown University v. Rhode Island College of Agriculture and Mechanic Arts et al.*, 56 Fed. 55, decided on May 31, 1893. In that case, after discussing the various related acts of Congress bearing on the subject, the court used the following language on page 60:

"It seems to me very plain that these words import, on their face, *a grant to the state*, and, by consequence, a duty in the state to administer the grant for the prescribed purpose; and *I am unable to see any consideration, arising from the nature of the case, which should modify this plain import*. The provisions as to payment to the treasurer and payment by him do not necessarily exclude the controlling action of the state. It is convenient that a particular person be designated as the agent for the receipt and disbursement; and these words make this designation *without stating, in terms, at least, whether he acts as agent for the state or for the government*. But the general scope of the act is clearly consonant only with a grant to the state. The money is to be 'paid to each state'; the amount to be 'paid to each state' is to be so much; no money shall be 'paid to any state' in certain contingencies; the money is spoken of as 'appropriated to the states', and the installments as becoming 'due to any state'; that the fund, if lost, shall be replaced 'by the state or territory to which it belongs'; that the secretary shall report, 'as to each state and territory, whether it is entitled to receive its share'; and that the secretary, in certain cases, 'shall withhold a certificate from any state or territory of its appropriation.' It is also provided that the secretary shall report 'the disbursements which have been made in all the states and territories, and also whether the appropriation of any state or territory has been withheld.' These latter words do, indeed, give color to the suggestion that the references to a grant to the states imply, not a grant to the states as political bodies, but, rather, grants to persons or corporations within the limits of these states. But all the other phrases of the act look the other way. The

act, verbally read, leaves no ground for the interpretation urged by the complainant. And a consideration of the purpose and scope of the act seems to me still more persuasive. Under the act of 1862 the state controls at least the fund which supports the college, and is liable to make good any loss or misapplication of the principal. Under the act of 1890 the state is equally liable, and ought to have at least an equal control." (Our italics.)

Again, in the case of Wyoming, ex rel. Wyoming Agricultural College v. Irvine, Treasurer of the State of Wyoming, 206 U. S. 278, decided May 13, 1907, the same acts of Congress were under consideration. The court in its opinion said:

"The grant made in this statute is clearly to the state and not to any institution established by the state." See page 283.

Again, the court in its opinion said:

"It is so obvious that these appropriations are made to the state and not to any institution within the state, and that the states, acting through their legislatures, are to expend the appropriations in accordance with the trust imposed upon them, that it is unnecessary to quote the numerous expressions in this act which support that view." See page 283.

Note also the following language:

"There is in the hands of the state treasurer the permanent fund established under the act of 1862, and one of the annual appropriations paid to him under the act of 1890. The interest on the fund and the annual appropriation the state treasurer is about to pay to the University of Wyoming in obedience to the laws of the state. The agricultural college claims that it is entitled under those statutes to receive this money. If this claim fails it is the end of the case. But, as has been shown, *both the fund and its interest and the annual appropriations are the property of the state and not of any institution within it.*" (Our italics.)

Wyoming ex rel., etc. v. Irvine, etc., 206 U. S. 278, at pages 283-284.

I am aware of the fact that it may be claimed that the above cases do not go to the question as to the ownership of such funds as between the state and the federal government, but, in my opinion, the language used is quite persuasive and leads to the certain conclusion that such funds when paid to the state become the "property of the state."

See also the case of *State ex rel., Davis et al. v. Clausen, State Auditor* (Wash.), 295 Pac. 751, which holds that monies paid to the state treasurer under the Smith-Lever act, under the Hatch act and under the Morrill act must be appropriated by the state in order to authorize the state auditor to issue his warrant.

In my opinion the funds described by you when paid to the State of Indiana become state funds to be expended by the state pursuant to the terms of the grants, and that the same should be deposited by you pursuant to the laws of the state regulating the deposit of such funds.

As to the application of the "State Sinking Fund for Public Deposits" Act of 1932 to such funds, insofar as said act provides for the diversion of certain depository interest, it is true as to the first fund mentioned by you that the expenditure thereof is to be governed by the provisions of the act of July 2, 1862, which provides, among other things, that:

"The moneys so invested shall constitute a perpetual fund, the capital of which shall remain forever undiminished (except so far as may be provided in section fifth of this act), and the interest of which shall be inviolably appropriated, by each state which may take and claim the benefit of this act to the endowment, support, and maintenance of at least one college where the leading object shall be," * * * "to teach such branches of learning as are related to agriculture and the mechanic arts, * * *"

12 U. S. Statutes at Large 504.

I find also that the same act provides further that:

"If any portion of the fund invested, as provided by the foregoing section, or any portion of the interest, thereon, shall, by any action or contingency, be diminished or lost, it shall be replaced by the state to which it belongs, so that the capital of the fund shall remain

forever undiminished; and the annual interest shall be regularly applied without diminution to the purposes mentioned in the fourth section of this act, except that a sum, not exceeding ten per centum upon the amount received by any state under the provisions of this act, may be expended for the purchase of lands for sites or experimental farms, whenever authorized by the respective legislatures of said states."

12 U. S. Statutes at Large 504.

Section 3 of the same act provides further, that all expenses incurred in the management and disbursement of such monies shall be paid by the states to which they may belong out of the treasury of said states.

12 U. S. Statutes at Large 504.

I think it is doubtful, however, whether the interest provisions of the 1862 act, *supra*, creating a perpetual fund and providing for its investment are applicable to the annual appropriations under the 1890 and 1907 acts, which make no requirement for the investment of such fund. I think, in the absence of a congressional requirement of investment of such fund and that *the interest* as well as the fund be used for a certain specified purpose, that the state, which is required to use the fund as specified without diminution and which is charged with the duty to replace any loss in the fund itself, may, for the greater protection of the fund, deposit the same in a legally designated state depository, and use the required part of the depository interest thereon to secure such deposit. The fund is not thereby depleted or diminished, but is more amply secured, and I do not see that such a diversion of interest in any sense conflicts with the terms of the grant. As to the other funds mentioned by you, I do not find any limitation which, in my opinion, would prevent the diversion of depository interest for the purpose and as provided by chapter 33 of the Acts of 1932.

For the reasons given, your first question is answered in the affirmative. The first question being answered in the affirmative, the second requires no answer.