

SEMINARY FUND: Investment of Seminary Fund is under exclusive  
SCHOOLS: control of Board of Curators. State Treasurer  
STATE TREASURER: liable on bond only if investment is net legal.

*Cowan, Leslie*

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September 30, 1947

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Mr. Leslie Cowan, Secretary  
University of Missouri  
Columbia, Missouri

Dear Mr. Cowan:

This department is in receipt of your request for an official opinion which reads as follows:

"I am instructed by the Board of Curators to request your opinion as to whether or not the Board of Curators is the only body to make investments of the State Seminary Fund. This request is made with the knowledge of and the cordial consent of the State Treasurer, Mr. Winn. The request arises from a question in Mr. Winn's mind regarding one section of a law passed by the 63rd General Assembly referring to the handling by him of the Seminary funds.

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"The new State Constitution separates the Public School Fund from the Seminary Fund and provides for distinct management of the two funds which were previously under the supervision of a single board. Article 9, Section 6, of the Constitution provides that the Seminary Fund shall be

' . . .securely invested by the Board of Curators of the State University . . .'

"The 63rd General Assembly, in revising the statute law to conform to the new Constitution, enacted a law (Senate Bill #210) containing provisions relating to the management of the Seminary Fund. Section 4 of this act specifies that the Board of Curators shall be the Commissioners of the Seminary Fund and that all monies and funds held in such fund or received by it, except the interest on the same, shall be invested by the said Commissioners. However, Section 12 of the same law in reciting the duties of the State Treasurer reads,

' . . . for all property or money received under this Article by the State Treasurer, he and his sureties shall be responsible for the safekeeping, investment, reinvestment and disbursement of the same on his official bond.'

"This reference to investment and reinvestment in Senate Bill #210 has caused Mr. Winn, the State Treasurer, some concern and he has raised a question with us in regard to the responsibility for the investment of the monies in the State Seminary Fund. There are now funds available for investment and the Board of Curators is anxious to do its duty."

Section 6, Article IX of the Constitution of Missouri 1945 provides as follows:

"The proceeds of all certificates of indebtedness due the Seminary Fund, the net proceeds of all sales of lands granted to the state for the benefit of the State University with its several divisions, as provided by law, and all gifts, grants, bequests, or devises to said Seminary Fund for the benefit of the University, and not otherwise appropriated by the terms of any such gift, grant, bequest or devise, shall be paid into the state treasury, and securely invested by the board of curators of the State University and sacredly preserved as a Seminary Fund, the annual income of which shall be faithfully appropriated for maintenance of the State University, and for no other uses or purposes whatsoever." (Underscoring ours)

Section 4, Laws of Missouri 1945, page 1634 provides:

"The Board of Curators of the University of the State of Missouri shall be the commissioner of the Seminary Fund and all monies and funds held in such fund, or received by it, except the interest on the same, shall be invested by the said commissioners in registered bonds of the United States or the State of Missouri, bonds of school districts of the State of Missouri, or bonds or other securities, payment of which are fully guaranteed by the United States, of not less than par value." (Underscoring ours)

Under the Constitution and the statute quoted above the duty of investing the Seminary Fund is imposed upon the Board of Curators of the University of Missouri. However, Section 12, Laws of Missouri 1945, page 1634, provides that:

"For all property or money received under this article by the State Treasurer, he and his sureties shall be responsible for the safe keeping, investment, reinvestment and disbursement of the same on his official bond." (Underscoring ours)

The question then is presented as to what responsibility the Treasurer has in regard to the investment and reinvestment of the Seminary Fund.

There can be no question that under the Constitution the exclusive right to invest the Seminary Fund is placed in the Board of Curators, and this exclusive control of the fund cannot be exercised or interfered with by any other officer or board so long as the Board of Curators follows the Constitution and the statutes relating to said fund. The duties of the Treasurer in regard to said fund are given in Section 11, Laws of Missouri 1945, page 1634, as follows:

"It shall be the duty of the State Treasurer: First, to receive and safely keep all bonds, stocks or money which shall, from time to time, be paid into the State Treasury on account of the Seminary Fund, or the income thereof; second, to pay all warrants lawfully drawn by the Auditor on such fund or income; third; to exhibit to the Board of Curators, quarter-yearly, such accounts and reports as they may require, relating to the Seminary Fund in the power of the Treasurer to exhibit; fourth, to exhibit to the Legislature, at each regular session, exact accounts of all receipts and expenditures on account of the Seminary Fund or income, and a report of all such information as may be in his power relating to such fund and property dedicated to the use of the University."

From the above section it will be seen that the Treasurer has the duty to receive and safely keep the Seminary Fund and to disburse the same, for which duties he is responsible on his official bond under Section 12. Further, he has the duties to exhibit the

accounts to the Board of Curators and the Legislature. Nowhere is he given the duty or the right specifically or inferentially to control the investment of the fund. What then is the meaning of the provision that the Treasurer "shall be responsible for the \* \* \* \* \* investment, reinvestment" of the Seminary Fund.

The nearest case that we have been able to find dealing with this question is that of State v. Grand Forks County, 71 N.D. 355, 300 N.W. 827, in which the State of North Dakota sued a county of that state to recover taxes collected by the county treasurer and which taxes had not been paid over to the state as required by law. The taxes had been collected by the county treasurer and deposited in a county depository which had failed. The court pointed out that the county treasurer in collecting the tax did so as the person designated by law to make the collection, and not as the agent of the county and at no time were such funds subject to county control. However, the state pointed out that there was a statute which provides as follows:

"Each county is responsible to the state for the full amount for the tax levied for state purposes."

We quote at length the court's answer to this contention, because we believe it is especially apropos to the present situation. The court said, l.c. 830:

" \* \* \* \* Ordinarily the word responsible connotes a conditional rather than unconditional liability. It is a word which is commonly used to describe the relationship of executors, guardians and other trustees to property which has been placed in their charge. Trustees are responsible for trust property but they cannot be made liable for any loss or depreciation of the fund intrusted to them so long as they 'keep themselves strictly within the line of duty, and exercise reasonable prudence, care and diligence.' 65 C.J. 819. The Century Dictionary comments upon the use of this word, as follows: 'With regard to the legal use of the word, two conceptions are often confused--namely, that of a potential condition of being bound to respond or answer in case a wrong should occur and that of the actual condition of being bound to respond because a wrong has occurred. For the first of these responsible is properly used, and for the second liable.'

Webster's New International Dictionary, 2nd Ed., defines 'responsible' as 'Liable to respond; likely to be called upon to answer; accountable; amenable.' In Thomas v. Mahan et al., 4 Me. 513, the court said: 'The expression "holden to account for," means, not merely to "render an account of," but, "to be responsible for;" it stands in opposition to the right of appropriation to one's own use and benefit.'

"Giving to the word 'responsible' its ordinary meaning, we think that section 2183, supra, imposes a condition of potential liability or accountability upon counties for state taxes and that a county's duty to account may be met by showing that the county officers have adhered strictly to the statutory directions of the State Legislature and have acted with honesty, prudence and diligence. \* \* \* \* \*

(Underscoring ours)

In line with the reasoning of the above opinion we believe the responsibility of the State Treasurer for the investment and reinvestment of the Seminary Fund is limited to seeing that the Board of Curators, who have the exclusive duty to invest the funds, follows strictly the statutory directions and that they account honestly and legally. So long as the Board of Curators follows the law relating to the investment of the fund then no liability incurs upon the Treasurer. However, if the Board of Curators invests the funds in private bonds which they are forbidden to do under Section 4, Laws of Missouri 1945, supra, and if the Treasurer releases money from the Seminary Fund to pay for such bonds he would be liable upon his official bond.

CONCLUSION

It is, therefore, the opinion of this department that the investment of the Seminary Fund is under the exclusive control of the Board of Curators of the University of Missouri, and the State Treasurer is liable upon his official bond only if the Board of

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Curators in making such investments does not follow the statutory directions of the Legislature, and the Treasurer disburses moneys of the Seminary Fund in payment of such illegal investments.

Respectfully submitted

ARTHUR M. O'KEEFE  
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APPROVED

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J. E. TAYLOR  
Attorney General