

Chapter 293

Receiving, Handling and Disbursing State Funds

293.105

ATTY. GEN. OPINIONS: Revenue from cigarette taxes under a measure which never became law, becomes a part of the General Fund, 1942-44, p 147; construing "money," 1964-66, p 32.

293.110

ATTY. GEN. OPINIONS: Moneys recovered under Old Age Assistance Act, 1938-40, p 283; construing "money," 1964-66, p 32.

293.115

ATTY. GEN. OPINIONS: Legislative authority regarding trust fund, 1962-64, p 178; construing "money," 1964-66, p 32.

293.120

NOTES OF DECISIONS

The appropriation provided in this section is in the nature of a continuing appropriation of the amounts paid in, and it is an appropriation made by law within the meaning of Ore. Const. Art. IX, §4. *Holmes v. Olcott*, (1920) 96 Or 33, 189 P 202.

Construing this section with former laws expending license fees and fines to provide for the propagation and protection of wildlife where no sum was specified, the appropriation became certain when the moneys were collected and turned over to the State Treasurer; and the authority to so expend moneys was a matter within the discretion of the legislature. *Id.*

ATTY. GEN. OPINIONS: Availability of funds after tax levy, 1944-46, p 62.

293.140

CASE CITATIONS: *State ex rel. Sprague v. Straub*, (1965) 240 Or 272, 400 P2d 229, 401 P2d 29.

ATTY. GEN. OPINIONS: Crediting interest on invested funds, 1964-66, p 31; receiving and investing funds paid on state-owned mortgages, 1964-66, p 274.

293.165

ATTY. GEN. OPINIONS: Certificate of indebtedness as direct legal obligation of the state, 1930-32, p 163; issuance of certificates of indebtedness payable from moneys accruing from taxes levied and in course of collection, 1932-34, p 3.

293.170

NOTES OF DECISIONS

A claimant to recover funds arising from sale of escheated

property is entitled to recover interest after he has received a warrant and the same is indorsed "not paid for want of funds." *Young v. State*, (1900) 36 Or 417, 59 P 812, 60 P 711, 47 LRA 548.

The provisions of this section are valid, being germane to title of the amended Act. *State v. Holman*, (1933) 142 Or 339, 20 P2d 430.

This section is not an unconstitutional limitation upon the powers and duties of the State Treasurer under Ore. Const. Art. VI, §4. *Id.*

FURTHER CITATIONS: *Monteith v. Parker*, (1899) 36 Or 170, 174, 59 P 192, 78 ALR 768.

ATTY. GEN. OPINIONS: Nonpayment of warrants for want of funds as authorizing State Treasurer to pay interest thereon, 1932-34, p 119; nonpayment of warrants for want of funds as requiring State Treasurer to indorse "not paid for want of funds," 1932-34, p 393.

293.210

CASE CITATIONS: *Eastern & Western Lbr. Co. v. Patterson*, (1928) 124 Or 112, 147, 258 P 193, 264 P 441.

ATTY. GEN. OPINIONS: State Treasurer, after appropriation is exhausted, borrowing from General Fund, 1950-52, p 286; authority of legislature to temporarily transfer moneys from the state Forest Research and Experiment Fund to the Forest Emergency Fire Cost Account, 1952-54, p 99; construing "money," 1964-66, p 32.

293.235 to 293.245

ATTY. GEN. OPINIONS: Procedure to write off claims, 1964-66, p 423.

293.240

ATTY. GEN. OPINIONS: Right of set off applied to claims against the state, (1970) Vol 35, p 65.

293.260 to 293.500

ATTY. GEN. OPINIONS: Return of checks for motor vehicle fees with incomplete applications, 1962-64, p 481.

293.260

ATTY. GEN. OPINIONS: Contract appointing attorneys to represent state in connection with claim against United States for expenses incurred in recruiting troops during Civil War, 1930-32, p 68; recovery of salary paid a public officer in excess of that permitted by the Constitution or statutes, 1930-32, p 157; disposition of certain reimbursements to the State Forester for services rendered, 1956-58, p 80; authority to determine accountability of officers handling Student Driver Training Fund and Motor Vehicle Accident Fund, 1966-68, p 222; recovery of payment on

senior citizen property tax exemption subsequently canceled, 1966-68, p 510; right of setoff applied to claims against the state, (1970) Vol 35, p 65.

293.265

ATTY. GEN. OPINIONS: Disposition of money realized from sale of junked property salvaged from State Capitol, 1934-36, p 529; disposition by Board of Pharmacy of private funds received for use for inspection and law enforcement purposes, 1934-36, p 533; racing commission funds as within statute, 1936-38, p 242; proceeds of sale of predatory animal skins as within statute, 1936-38, p 467; proceeds of sale of publications of department of education publications as within statute, 1936-38, p 492; money received in payment of the cost of litigation involving the constitutionality of the pinball machine tax as a miscellaneous receipt in the General Fund rather than distributed as a fund received under the pinball machine tax Act, 1944-46, p 92; accumulation of funds by the State Board of Control, 1950-52, p 231; funds received pursuant to 1937 c. 187 §2 as not being appropriated by accounting and inventory statutes governing state property other than realty, 1950-52, p 248; disposition of funds received under Clarke-McNary Act, 1956-58, p 80; limitations on expenditures of State Board of Higher Education, 1960-62, p 289; disposition of reserve for expenses and unclaimed funds due distributees held by Insurance Commissioner as statutory liquidator, 1964-66, p 252; authority of board in handling checks of applicants paid for fees, 1964-66, p 454.

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ATTY. GEN. OPINIONS: Revenue from cigarette taxes under a measure which never became law becoming a part of the General Fund, 1942-44, p 147; disposition of funds received under Clarke-McNary Act, 1956-58, p 80; limitations on expenditures of State Board of Higher Education 1960-62, p 289; crediting interest on invested funds, 1964-66, p 31.

293.280

ATTY. GEN. OPINIONS: Student and other fees collected by State Agricultural College as requiring creation and maintenance in bank of a special account by the State Treasurer, 1930-32, p 551.

293.290

ATTY. GEN. OPINIONS: Authority of the Secretary of State to allow examination of records showing receipt of moneys escheated to the Common School Fund, 1938-40, p 416.

293.295 to 293.306

NOTES OF DECISIONS

1. Under former similar statute

(1) **In general.** The act of drawing a warrant on the treasury was a part of the act of auditing, and not a drawing of money from the treasury. *Shattuck v. Kincaid*, (1897) 31 Or 379, 49 P 758; *Croasman v. Kincaid*, (1897) 31 Or 445, 49 P 764.

A surety, for a contractor with the state, performing the contract on the principal's default had a right to settle accounts with the Secretary of State. *Derby v. U.S. Fid. & Guar. Co.*, (1917) 87 Or 34, 169 P 500.

Final payment to a highway contractor was not postponed until sworn proof that all debts incurred by him in the prosecution of his work were paid. *Oregon Sur. & Cas. Co., v. U.S. Nat. Bank*, (1931) 136 Or 573, 300 P 336.

In an action to recover salary for services as a county judge, the complaint was insufficient where it did not allege that plaintiff rendered any service for which payment had not been made in full, and a bare averment that plaintiff "assumed said office" did not show that the county became indebted to him, especially where plaintiff admitted that during the period for which he sought judgment he was incapable of discharging the duties of the office. *Fehl v. Jackson County*, (1945) 177 Or 200, 161 P2d 782.

(2) **Duties of Secretary of State.** A Secretary of State was responsible for good faith and ordinary care and competency, in carrying out the duties prescribed by the former statute. *State v. Chadwick*, (1879) 10 Or 525.

The Secretary of State was required to pass upon a claim without regard to whether the legislature had or had not appropriated money to meet it. *Shattuck v. Kincaid*, (1897) 31 Or 379, 49 P 758. Overruling *Brown v. Fleischer*, (1871) 4 Or 132.

There was a duty to audit a claim for services to the state where the nature and amount were definitely fixed and ascertained, and the compensation was regulated by law. *Shattuck v. Kincaid*, (1897) 31 Or 379, 49 P 758.

There was a duty to audit an unliquidated claim for supplies furnished to the state where the supplies were furnished pursuant to law. *Croasman v. Kincaid*, (1897) 31 Or 445, 49 P 764; *Irwin-Hodson Co. v. Kincaid*, (1897) 31 Or 478, 49 P 765.

Before auditing or drawing a warrant for a claim, the Secretary of State had to justify his act by some written law. *Boyd v. Dunbar*, (1904) 44 Or 380, 75 P 695.

The Secretary of State following an opinion of the Attorney General as to the validity of a claim was protected, even though the opinion was erroneous. *State v. Mott*, (1940) 163 Or 631, 97 P2d 950.

(3) **Effect of deciding claim.** The decision of the Secretary of State upon a claim presented to him for allowance was not conclusive upon rights of parties in a collateral proceeding nor was it a judicial determination. *State v. Brown*, (1882) 10 Or 215.

No account stated was constituted by the allowance of a claim presented to the secretary so as to preclude an inquiry as to its correctness, in an action by the state for a sum alleged to have been unlawfully allowed and paid through mistake. *Id.*

FURTHER CITATIONS: *Shattuck v. Kincaid*, (1897) 31 Or 379, 49 P 758.

ATTY. GEN. OPINIONS: Authority to issue "blanket warrant" for expenses in connection with the cruising of lands to be exchanged for and to be included in state forest reserve, 1920-22, p 104; payment of claim for sum appropriated by the legislature as refund of escheated property, 1934-36, p 376; auditing and drawing warrants in payment of purchases of liquor by the Liquor Control Commission for future delivery, the statutes containing such authorization being special and an exception from the general law, 1942-44, p 222; advancing funds received by state through federal grants or allotments to agencies conducting vocational schools to cover current expenses or otherwise in the absence of specific authority, 1942-44, p 460; effect of sale of state warrants at an execution sale, 1948-50, p 224; refund where wheat taxes overpaid, 1956-58, p 267; examination and allowance of claims, 1956-58, p 277; authority of Secretary of State to draw warrant where allocation made from Emergency Fund for circuit judges' travel expenses, 1958-60, p 297; authority of Secretary of State to designate fund out of which warrant is payable by machine code punch, 1958-60, p 418; disposition of warrant drawn on Judges' Retirement Fund and not paid at time of death, 1960-62, p 113.

293.295

ATTY. GEN. OPINIONS: Adequacy of Executive Department procedures for approval of claims, (1971) Vol 35, p 583.

293.300

ATTY. GEN. OPINIONS: Adequacy of Executive Department procedures for approval of claims, (1971) Vol 35, p 583.

293.311

CASE CITATIONS: State ex rel. Overhulse v. Appling, (1961) 226 Or 575, 361 P2d 86.

ATTY. GEN. OPINIONS: Who may verify claim for indemnity, 1920-22, p 173; examination and allowance of claims, 1956-58, p 277; authority of Secretary of State to draw warrant where allocation made from Emergency Fund for circuit judges' travel expenses, 1958-60, p 297.

293.321

NOTES OF DECISIONS

Under former similar statute where the claim was not presented within the time specified in the statute, the secretary could not audit or approve it, even if it was a legal obligation of the state. Boyd v. Dunbar, (1904) 44 Or 380, 75 P 695.

FURTHER CITATIONS: State ex rel Overhulse v. Appling, (1961) 226 Or 575, 361 P2d 86.

ATTY. GEN. OPINIONS: Running of statute of limitations on claims under this section, 1920-22, pp 157, 586, 1928-30, p 581, 1932-34, p 428, 1938-40, p 370, 1944-46, p 131; examination and allowance of claims, 1956-58, p 277; authority of Secretary of State to draw warrant where allocation made from Emergency Fund for circuit judges' travel expenses, 1958-60, p 297.

293.326

ATTY. GEN. OPINIONS: Right of set off applied to claims against the state, (1970) Vol 35, p 67.

293.330

ATTY. GEN. OPINIONS: Status of vouchers signed by the secretary of the State Highway Commission, 1950-52, p 234.

293.346

CASE CITATIONS: Calbreath v. Dunbar, (1905) 46 Or 580, 81 P 366.

ATTY. GEN. OPINIONS: Refunding of money paid under unconstitutional statutes, 1930-32, p 34; refund of money paid to Public Utility Commissioner by railroads in excess of fee required on account of intrastate operations, 1930-32, p 243; authority to return fee to applicant for license to conduct a vocational school on denial of license, 1936-38, p 517; power of legislature to appropriate money by resolution, 1948-50, p 201; State Treasurer, after appropriation is exhausted, borrowing from General Fund pursuant to ORS 291.404, 1950-52, p 286; disbursing funds in General Fund, Milk Control Account, 1960-62, p 255; duty of State Treasurer to examine indorsements on state drafts, 1966-68, p 564.

293.405

NOTES OF DECISIONS

The treasurer is presumed to know what appropriations have been made, and he has no right to pay warrants unless drawn upon some specified fund or unless a statute provides otherwise. Brown v. Fleischner, (1871) 4 Or 132.

In the absence of appropriation, the treasurer has no authority to disburse funds. Shattuck v. Kincaid, (1897) 31 Or 379, 385, 49 P 758.

ATTY. GEN. OPINIONS: Payment of claim for sum appropriated by the legislature as refund of escheated property, 1934-36, p 376; duties with regard to payment for liquor purchased for Liquor Control Commission, 1942-44, p 344; authority of Secretary of State to designate fund out of which warrant is payable by machine code punch, 1958-60, p 418; disposition of warrant drawn on Judges' Retirement Fund and not paid at time of death, 1960-62, p 113; duty of State Treasurer to examine indorsements on state drafts, 1966-68, p 564.

293.440

ATTY. GEN. OPINIONS: Payment of World War II Veteran's bonus after cancellation of warrant, 1960-62, p 265.

293.445

ATTY. GEN. OPINIONS: Authority to make refund to persons who have remitted in error, or made overpayment, to the Liquor Control Commission, 1934-36, p 37; disposition of money received by State Health Officer from United States social security or other board, 1940-42, p 511; payments tendered for taxes received and treated as suspense items until the effective date of the Act, 1942-44, p 208; disposition by State Department of Agriculture of milk control equalization moneys and license and poundage fees, 1942-44, p 249; authority of Division of Vocational Education, Board of Education, to set up revolving fund in State Treasurer's office with funds provided by government in following procedure approved by U.S. Office of Education, to meet payroll claims for the war production training program, 1942-44, p 357; refund where wheat taxes overpaid, 1956-58, p 267; authority of State Board of Health to refund application fee, 1958-60, p 321; refund of fees paid to State Marine Board under mistake of fact, 1960-62, p 11; Insurance Commissioner's authority to refund tax, 1960-62, p 80; disbursing funds in General Fund, Milk Control Account, 1960-62, p 255; retaliatory taxes collected prior to 1958, 1960-62, p 263; use of unclaimed motor boat fuel tax refund, 1962-64, p 67; refund of commercial fishing license fees, 1962-64, p 70; authority to return registration renewal fee, 1962-64, p 194; refunding excess advanced, 1962-64, p 317; disposition of reserve for expenses and unclaimed funds due distributees held by Insurance Commissioner as statutory liquidator, 1964-66, p 252; applicability to Public Employees' Retirement System accounts, 1964-66, p 260; receiving and investing funds paid on state-owned mortgages, 1964-66, p 274; refunding barber license fees, 1964-66, p 312; authority of board in handling checks of applicants paid for fees, 1964-66, p 454; effect of excess income tax withholding on property tax relief surplus, 1966-68, p 25; distribution of cigarette tax money to cities and counties, 1966-68, p 62; refunds to insurance companies by Corporation Commissioner, 1966-68, p 259; authority of State Board of Engineering Examiners to refund examination fees, 1966-68, p 561; authority of State Marine Board to make refunds, 1966-68, p 581; refunding fees paid State Board of Pharmacy by licensee on military leave, (1968) Vol 34, p 11; refund of fees paid by foreign corporation because of error in Insurance Division instructions, (1970) Vol 35, p 165; emergency

clause in bill changing cigarette tax money distribution formula, (1971) Vol 35, p 556.

293.450

ATTY. GEN. OPINIONS: Listing check for refund of annual power fee refused and returned to State Engineer, 1946-48, p 14; applicability to Public Employees' Retirement System accounts, 1964-66 p 260.

293.455

ATTY. GEN. OPINIONS: Disposition of unclaimed money held for refund by state agencies, 1958-60, p 50; use of unclaimed motor boat fuel tax refund, 1962-64, p 67; applicability to Public Employees' Retirement System accounts, 1964-66, p 260.

293.470

ATTY. GEN. OPINIONS: Sufficiency of evidence that lost or stolen highway bond coupons have been destroyed in order that payment thereof may be safely made, 1920-22, p 148; reimbursement for premium paid for a surety bond in the case of a claim on account of a lost warrant, 1930-32, p 160; cause of action against bond given in connection with issuance of duplicate state warrant when original warrant has been presented and paid, 1934-36, p 85.

293.485

NOTES OF DECISIONS

This section protects the "true and lawful owner" of the warrant and cannot be invoked by one who bought the warrants which had already been paid. *Woodward v. School Dist. 73*, (1939) 163 Or 63, 94 P2d 136.

293.490

ATTY. GEN. OPINIONS: Disposition of funds of deceased patient of state mental hospital, 1962-64, p 72; application of patient's funds to expenses of last illness, 1964-66, p 65.

293.495

ATTY. GEN. OPINIONS: Disposition of funds of deceased patient of state mental hospital, 1962-64, p 72; application of patient's funds to expenses of last illness, 1964-66, p 65.

293.550

ATTY. GEN. OPINIONS: Applicability to funds available under the Economic Opportunity Act, 1964-66, p 129; state and county authority in program on aging, 1966-68, p 479; use of federal grants for state program for community development, (1969) Vol 34, p 759; authority to receive and administer federal planning assistance grant, (1970) Vol 34, p 1083.

293.560

CASE CITATIONS: *School Dist. 24J v. McCarthy*, (1966) 244 Or 379, 418 P2d 817.

ATTY. GEN. OPINIONS: Use of forest reserve rentals to reduce the county school fund levy, 1950-52, p 199; application of authority to transfer road funds to school fund, (1969) Vol 34, p 770.

LAW REVIEW CITATIONS: 4 WLJ 568, 569.

293.605

ATTY. GEN. OPINIONS: "Fiscal year" applicable to State Marine Board Account distributions, 1964-66, p 352; fiscal year of Oregon Liquor Control Commission, 1966-68, p 312.

293.611

ATTY. GEN. OPINIONS: Method of bookkeeping between state department and state treasury as not question of law, 1920-22, p 595; contract appointing attorneys to represent state in connection with claim against United States for expenses incurred in recruiting troops during Civil War, 1930-32, p 68; custody and disbursement of certain funds granted by Federal Government for use of certain state institutions, 1934-36, p 790.

293.620

ATTY. GEN. OPINIONS: Oregon Social Hygiene Society as subject to statute, 1924-26, p 492; payments of federal tax on proceeds of sale by Fish Commission of surplus electrical energy, generated in operation of plant at Bonneville, 1932-34, p 595; disposition of money realized from sale of junked property salvaged during razing of burned State Capitol, 1934-36, p 529; disposition of moneys received from sale of publications compiled and published by State Department of Education, 1936-38, p 492.

293.655

ATTY. GEN. OPINIONS: Adequacy of summary statement of state financial condition, 1958-60, p 72.

293.660

ATTY. GEN. OPINIONS: When mailed document is delivered, 1966-68, p 555.

293.701 to 293.776

ATTY. GEN. OPINIONS: Responsibility for investment of Common School Fund, 1966-68, p 562.

293.701

CASE CITATIONS: *State ex rel. Sprague v. Straub*, (1965) 240 Or 272, 400 P2d 229, 401 P2d 29.

ATTY. GEN. OPINIONS: Temporary bonds issued by State Board of Higher Education, 1956-58, p 164; conflict of interest in State Treasurer contract with mortgage service firm in which legislator has an interest, 1962-64, p 335; management of buildings, collection of fees; determination of sinking fund surplus, custody of investment securities, 1962-64, p 437; investment in land sale contracts, 1962-64, p 488; crediting interest on invested funds, 1964-66, p 31; authorized investments for Oregon War Veterans' Fund, 1964-66, p 119; disposition of interest earned on certain constitutional and statutory funds, 1964-66, p 179; receiving and investing funds paid on state-owned mortgages, 1964-66, p 274; authority to invest in certificates issued by a bank on FHA and VA mortgages, 1966-68, p 22; investment of social security taxes by State Treasurer; crediting interest earned, 1966-68, p 123; investment of funds by State Treasurer in bonds of Inter-American Development Bank or of the International Bank for Reconstruction and Development, 1966-68, p 167.

293.706

ATTY. GEN. OPINIONS: Qualification of mutual funds for investments, 1966-68, p 309.

293.711

ATTY. GEN. OPINIONS: Allotment control of State Treasurer's share of council funds, 1966-68, p 495.

293.716

ATTY. GEN. OPINIONS: Authority to invest in convertible bonds, 1966-68, p 464; effect of 1967 Act on prior mortgage servicing contracts, 1966-68, p 471; allotment control of State Treasurer's share of council funds, 1966-68, p 495; authority to invest state funds in real estate, or to bid at foreclosure sale, (1968) Vol 34, p 1.

293.726**NOTES OF DECISIONS**

Constitutional prohibition against state subscribing to or being interested in stock of any company applies only to funds owned by state. *Sprague v. Straub*, (1969) 252 Or 507, 451 P2d 49.

ATTY. GEN. OPINIONS: Authority of World War Veterans' State Aid Commission to receive Home Owners' Loan Corporation bonds in payment of loans made to veterans, 1932-34, p 605; authority of State Land Board to purchase refunding issue of Oregon farm credit bonds for the irreducible school funds or the college funds, 1936-38, p 258; refunding dormitory bonds, 1938-40, p 227; investment in obligations of State Board of Higher Education, 1938-40, p 651; investing state funds in Stayton street improvement bonds, 1940-42, p 10; investing state trust funds or World War II Veterans' Bond Sinking Fund in Veterans' Compensation Bonds, 1950-52, p 286; conflict of interest in State Treasurer contract with mortgage service firm in which legislator has an interest, 1962-64, p 335; investment in land sale contracts, 1962-64, p 488; authorized investments for Oregon War Veterans' Fund, 1964-66, p 119; receiving escrowed funds paid on state-owned mortgages, 1964-66, p 274; authority to invest in certificates issued by a bank on FHA and VA mortgages, 1966-68, p 22; qualification of mutual funds for investments, 1966-68, p 309; authority to invest in convertible bonds, 1966-68, p 464; effect of 1967

Act on prior mortgage servicing contracts, 1966-68, p 471; authority to invest state funds in real estate, or to bid at foreclosure sale, (1968) Vol 34, p 1; application of 10 percent limit to Variable Annuity Account, (1969) Vol 34, p 659.

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ATTY. GEN. OPINIONS: Effect of 1967 Act on prior mortgage servicing contracts, 1966-68, p 471; allotment control of State Treasurer's share of council funds, 1966-68, p 495; authority to invest state funds in real estate, or to bid at foreclosure sale, (1968) Vol 34, p 1.

293.736

ATTY. GEN. OPINIONS: Qualification of mutual funds for investments, 1966-68, p 309; authority to invest in convertible bonds, 1966-68, p 464; effect of 1967 Act on prior mortgage servicing contracts, 1966-68, p 471; allotment control of State Treasurer's share of council funds, 1966-68, p 495; responsibility for investment of Common School Fund, 1966-68, p 562; authority to invest state funds in real estate, or to bid at foreclosure sale, (1968) Vol 34, p 1.

293.741

ATTY. GEN. OPINIONS: Qualification of mutual funds for investments, 1966-68, p 309.

293.746

ATTY. GEN. OPINIONS: Compliance with statutory conditions for issuing bonds, 1960-62, p 239; authorized investments for Oregon War Veterans' Fund, 1964-66, p 119; effect of 1967 Act on prior mortgage servicing contracts, 1966-68, p 471.

293.751

ATTY. GEN. OPINIONS: Authority to invest state funds in real estate, or to bid at foreclosure sale, (1968) Vol 34, p 1.

293.790

ATTY. GEN. OPINIONS: Authority of rural fire protection districts to borrow on short-term notes, 1962-64, p 326; duty to sell common stocks received in the Common School Fund by escheat or as abandoned property, 1964-66, p 206.