

NO AUTHORITY CONFERRED UPON COMPTROLLER TO TRANSFER FUNDS IN STATE TREASURY BY WARRANT.

Tallahassee, Fla., February 7, 1917.

*Honorable Ernest Amos, Comptroller,
Tallahassee, Florida.*

Dear Sir:

Yours of the 1st instant has been received.

I note your inquiry as follows:

"I have before me, which I enclose, bill of Hon. J. C. Luning, State Treasurer, against the Shell Fish Commission aggregating \$265.15, approved for payment by the Shell Fish Commissioner, with the request that I draw warrant against the Shell Fish Fund in payment of the same, which I have declined to do, because—

- "1. The bill on its face shows that it is not a proper charge against the Shell Fish Commission Fund, in favor of the State Treasurer.
- "2. I am without authority of law for the issuance of said warrant.

"I must admit that the first objection, while a good one, is more or less technical.

"The purpose of this bill is to transfer \$265.15, in my judgment, erroneously paid by the Commissioner of Agriculture into the Shell Fish Fund to the General Fund.

"Section 28, Chapter 6532, page 452, Acts 1913, provides that the Commissioner of Agriculture shall charge and receive a fee for services provided for in the Act, and 'all fees paid to the Commissioner of Agriculture shall be covered into the General Revenue Fund of the State,' meaning, of course, that it should be paid directly into this Fund. Section 2, page 119 of said Act provides that all fees, etc., shall be faithfully accounted for, reported and turned over to the State Treasurer once in a quarter with a certificate of its correctness, etc.

"Section 14, Chapter 6877, page 169, Acts 1915, provides, that 'all *license* tax shall be collected by the Shell Fish Commissioner, etc., who will place the same to the credit of the Shell Fish Fund.' Mind you,—it says nothing about putting any fees in the Shell Fish Fund.

"Section 22 of the same Act says that all accounts, claims and bills of any nature against the fishing industry shall be examined by the Shell Fish Commissioner, shall be approved, etc., and a warrant drawn by the Comptroller on the State Treasurer against the Shell Fish Fund to pay such account, claim or bill.

"My contention is that this is not a proper account, claim or bill against the Shell Fish industry, and therefore, I am not authorized by any law to draw a warrant for its payment. Further, that these fees accumulating from time to time should be paid into the General Fund of the State quarterly, as provided by the Sections quoted, and not into the Shell Fish Fund. I have suggested to the Shell Fish Commissioner that it would be proper for him to pay over \$265.15 into the General Revenue Fund, and deduct this amount, which, of course, has heretofore been paid into the Shell Fish Fund, from his current remittances to the Shell Fish Fund, which will have the effect of adjusting these accounts without the necessity of drawing a warrant to accomplish this purpose. We have agreed to submit the matter to you, and, of course, whatever your idea is in the premises as to the law of the case will determine our differences of opinion."

To accomplish the purpose designed, that is to say, to transfer the amount named from one fund in the State treasury to another fund in the State treasury, it seems to be necessary, as a practical matter, to have you, as Comptroller, draw a warrant upon the State Treasurer against the fund in which the amount is now held in order that it may be withdrawn from this fund and paid into the fund in which it should have been paid originally.

Your warrant for this purpose necessarily withdraws

from the treasury this amount, and the fact that it is to be immediately returned and placed in another fund in the State treasury does not change this result. The question presented, then, is whether or not there is any authority in law for your warrant, as Comptroller, which seems to be necessary to effectuate this purpose.

By Section 4, of Article IX, of the Constitution it is provided that:

“No money shall be drawn from the treasury except in pursuance of appropriations made by law.”

In Section 103 of the General Statutes of 1906, defining the duties of the Comptroller relative to warrants issued by him on the State Treasurer, it is said that:

“Said warrant shall also state the name of the original creditor and the different transferees, *and refer to the particular act or resolution, and section thereof, on which it is issued*, and the head of expenditure to which the same is chargeable, and the amount allowed shall be stated in words at length; *and no warrant shall ever be issued until the same shall be authorized by act or resolution of the Legislature.*”

In view of these constitutional and statutory provisions there is, in my opinion, no legal authority in you, as Comptroller of the State, to draw a warrant on the State Treasurer for the amount of this account, or any other amount for this purpose, and, on the other hand, since there is no statute authorizing the drawing of such warrant, you are prohibited from doing so.

Respectfully submitted,

T. F. WEST,
Attorney General.