

July 10, 2000
OPINION NUMBER 00-248

3 Appropriations

R.S. 23:1513
Article VII, §9 of the Louisiana Constitution

Mr. Ron J. Henson
First Assistant State Treasurer
P. O. Box 44154
Baton Rouge, LA 70804

Monies in the Penalty and Interest Account of the Employment Security Administration Fund are not in the State Treasury, do not need an appropriation to be withdrawn and do not revert to the general fund at the end of the fiscal year.

Dear Mr. Henson:

You requested the opinion of this office concerning the Employment Security Administration Fund (the "Fund"). As you advised, La. R.S. 23:1513 established a special, segregated account within the Fund known as the Penalty and Interest Account (the "Account"). Your question is whether the monies received and deposited into the Account, and the earnings thereon, are "state funds" such that the balance existing at the end of any fiscal year reverts or lapses to the general fund?

R.S. 23:1513 provides in pertinent part as follows:

A. (1) There is hereby created in the employment security administration fund an account which shall be known as the penalty and interest account. All interest, fines, and penalties, regardless of when the same became due and payable, collected from employers ... shall ... be paid into this account and shall at no time be considered to be a part of the unemployment compensation fund.

* * *

B. All monies in this account shall be deposited, administered, and disbursed, in the same manner and under the same conditions and requirements as is provided by law for other monies in the employment security administration fund except that monies in this account shall not be commingled with other funds, but they shall be maintained in a separate account in the books of the depository. **Any balances in this account shall not lapse at any time, but shall be continuously available for expenditure ...** (Emphasis added)

The phrase "any balances in this account shall not lapse at any time" must refer to the procedures set forth in La. R.S. 39:82, which provide for the reversion of cash balances to the state general fund for which no bona fide liability exists on the last day of the fiscal year. Accordingly, it is the opinion of this office that the balance in the Account at the close of the fiscal year does not revert to the State general fund.

Your second question is, if the balance does not revert to the State general fund, are there any approvals required by, or procedures involving other state officials or agencies or offices necessary for the balances of these monies to remain in the Account and not be transferred to the general fund at the end of each fiscal year?

We are not aware of any approvals or procedures which must be obtained or followed in order for the money to remain in the Account.

Your third question is, if the balance does not revert to the State general fund, are the monies in this Account otherwise subject to the provisions of Article III, Section 16(A) and Article VII, Section 10 of the Louisiana Constitution?

We call your attention to Op.Atty.Gen. 95-247, in which this office held that moneys collected and deposited in the Fund are not required to be deposited in the state treasury, and thus, no appropriation is required to withdraw the monies from the Fund. As the Account is within the Fund, those monies are not subject to appropriation.

Trusting this adequately responds to your request, we remain

Yours very truly,

RICHARD P. IEYOUB
Attorney General

BY:

MARTHA S. HESS
Assistant Attorney General

RPI/MSH
Enclosure

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Syllabus

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Date Received:

Date Released: July 10, 2000

Martha S. Hess
Assistant Attorney General