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STATE OF NEBRASKA
OFFICIAL
JAN 25 2010
DEPT. OF JUSTICE

STATE OF NEBRASKA
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JON BRUNING
ATTORNEY GENERAL

SUBJECT: Whether Shipper License Fees Received By The Liquor Control Commission From Shippers Licensed Under Neb. Rev. Stat. §§ 53-123.15(2) and 53-123.15(3) Should Be Deposited Into The General Fund Or Temporary School Fund.

REQUESTED BY: Hobert Rupe, Executive Director
Nebraska Liquor Control Commission

WRITTEN BY: Jon Bruning, Attorney General
Milissa Johnson-Wiles, Assistant Attorney General

You have requested an opinion from our office regarding the proper fund to deposit license fees that the Liquor Commission receives from certain licensed shippers. You have attached the State Auditor's "Nebraska Liquor Control Commission Attestation Review" to your request, wherein the Auditor states that he believes that certain shipper license fees should be deposited into the Temporary School Fund rather than the General Fund. You have further requested an opinion from our office regarding what options the Liquor Commission has if the funds have been mistakenly deposited into the wrong account.

There are two types of shipper's licenses in Nebraska. The first is a shipper's license to sell and ship directly to Nebraska consumers under Neb. Rev. Stat. § 53-123.15(4)(Reissue 2004), and the second is a shipper's license to ship to licensed wholesalers under Neb. Rev. Stat. § 53-123.15(2) and (3). We understand that your

question relates only to the second type of shipper's license (shipper to wholesaler), and that the Commission currently deposits these license fees into the General Fund.

Neb. Rev. Stat. § 53-117(10)(Reissue 2004) provides that the Liquor Commission shall "receive, account for, and remit to the State Treasurer state license fees and taxes provided for in the act."

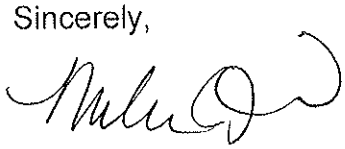
Neb. Rev. Stat. § 53-138.01 (Reissue 2004) relates to the disposition of liquor license fees. That section states, in relevant part: "The State Treasurer shall credit all license fees received by the commission for licenses pertaining to alcoholic liquor, including beer, to the temporary school fund to be used for the support of the common schools as provided in Article VII, section 5, of the Constitution of Nebraska."

You have indicated in your opinion request that shipper's licenses were previously called shipper's "permits," and that the Commission has historically placed the fees from shippers into the General Fund. As you stated in your letter, however, at some point in the 1980's, the Liquor Control Act was amended to change provisions regarding "permits" to "licenses."

We have reviewed the Liquor Control Act, and there is no current reference to "permits" in such Act. Nor is there any distinction that can be made that license fees paid by shippers who have been issued a license pursuant to Neb. Rev. Stat. §§ 53-123.15(2) and (3) are exempt from the provisions of Neb. Rev. Stat. § 53-138.01. As such, the proper fund for license fees received by the Commission from licensed shippers under Neb. Rev. Stat. §§ 53-123.15(2) and (3) is the Temporary School Fund and not the General Fund.

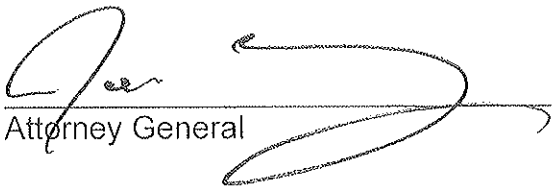
You have further asked what options are available to the Commission, if it is determined that the Commission has been mistakenly depositing such fees into the wrong account. We do not believe that this question asks for a legal opinion from this office. It would be our recommendation that the Commission consult with the State Auditor, State Treasurer, or the Department of Administrative Services regarding what steps, if any, can be taken to correct past errors.

Sincerely,



Milissa Johnson-Wiles
Assistant Attorney General

Approved:



Attorney General