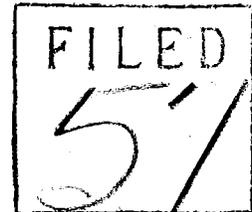


CONSERVATION COMMISSION: Construing Section 74, House Bill No. 66.
STATE PARK BOARD :
APPROPRIATION :

May 16, 1941.

5-17.

State Park Board
Jefferson City,
Missouri



Attention: Mr. E. A. Mayes
Assistant Director.

Gentlemen:

This will acknowledge receipt of your request for an official opinion, under date of May 14, 1941, wherein you inquire as to the legality of expenditures heretofore made. Also commitments already made but not yet paid, and as to what expenditures may be legally made under the appropriation act as found in Section 74, House Bill No. 66, as passed by the 61st General Assembly of the State of Missouri. In this opinion we shall deal only with the latter request.

It is fundamental in the construction of statutes and appropriation acts that the object and purpose underlying their enactment is of primary importance.

This proposition of law is laid down in the case of Cummings vs. Kansas City Public Service Company, 66 S. W. (2d) 920, l. c. 925. In that case the court said:

"* * * The primary rule of construction of statutes is to ascertain the law-makers' intent, from the words used if possible; and to put upon the language of the Legislature, honestly and faithfully, its plain and rational meaning and to promote its object, * * *."

May 16, 1941.

It is believed that the object and purpose underlying the appropriation, here under consideration, is to be found in the language of the appropriation act. This is at once apparent by the use of the following language:

"There is hereby appropriated * * * the sum of Twenty Thousand (\$20,000.00) Dollars, or so much thereof as may be necessary for the use of the State Park Board, for the purpose of securing Federal funds".

Particular attention is directed to the use of the language reading: "Twenty Thousand (\$20,000.00) Dollars, or so much thereof as may be necessary for the use, etc."

This language, it appears, emphasizes the fact that the Legislature knew that in order to secure the Federal funds it was necessary to make the appropriation. If this were not true, then why the use of the language reading, "for the purpose of securing Federal funds". It seems, therefore, to logically follow that it was necessary to make an appropriation of State monies in order to secure Federal funds.

While the above considerations clearly indicate that the object and purpose underlying the passage of the appropriation act was to secure Federal funds, nevertheless it is a matter of common knowledge that the State never actually receives Federal funds, but that Federal funds are expended by Federal agencies (C.C.C., W.P.A. and N.Y.A.) within the State of Missouri conditioned upon certain expenditures being made by the State authorities. Those expenditures would here be made by the State Park Board, as contemplated by the act hereunder reviewed.

Therefore, it logically follows that the Legislature was cognizant of this method of handling of Federal funds. From this it follows, in order that the intention of the Legislature may be clearly revealed, it is necessary to interpolate between the words "securing Federal" the words "the expenditure of", so that the appropriation act will read as follows:

May 16, 1941.

"There is hereby appropriated out of the State Treasury, chargeable to the General Revenue fund, the sum of Twenty Thousand (\$20,000.00) Dollars, or so much thereof as may be necessary for the use of the State Park Board for the purpose of securing the expenditure of Federal funds for construction work in State Parks, for the period beginning January 1, 1941 to June 30, 1941."

This construction of the statute is supported by the case of State ex rel. v. Moneyham, 212 Mo. App. 573, l. c. 580, 581, which reads as follows:

"* * * The rule to be observed by the courts in the construction of statutes, and the one to which all others are aids, is, that the intent of the Legislature, when ascertainable from the language used, construed in the light of the end sought to be obtained, must control.

"If the intent of the Legislature is reasonably clear then all grammatical errors and errors in spelling and punctuation are disregarded or corrected. The meaning of words may be limited, restricted or expanded by construction of the courts when it becomes necessary in order to make the law harmonize with reason and properly express what was in fact intended by the lawmakers in enacting the law. (St. Louis v. Christian Bros. College, 257 Mo. 541, 552, 165 S. W. 1057; Stack v. General Baking Co., 283 Mo. 296, 410-413, 223 S. W. 89.)

"To accomplish the same purpose words omitted may be read into the statute.
* * *"

May 16, 1941.

Now, we are concerned with the question as to just how much of the appropriation under Section 74, House Bill No. 66, may be expended by the State Park Board and what constitutes legal expenditures thereunder.

In the beginning we will say, this may not be the same in any two instances. The amount expended and valid expenditures, to a great extent, depend upon the agreement or contract entered into and approved by the Federal agency as well as the State Park Board.

Therefore, it is necessary that we carefully examine the Federal act, rules and regulations, authorizing an appropriation and expenditure on such projects in the State parks of Missouri, as well as the State appropriation act as found in Section 74, House Bill No. 66, supra. This appropriation act reads as follows:

"There is hereby appropriated out of the State Treasury, chargeable to the General Revenue fund, the sum of Twenty Thousand (\$20,000.00) Dollars, or so much thereof as may be necessary for the use of the State Park Board for the purpose of securing Federal funds for construction work in State parks, for the period beginning January 1, 1941 to June 30, 1941."

We have hereinabove held that the Legislature intended to include the following words after the word securing "for the expenditure of", for the reason the State nor the State Park Board actually received any Federal funds for such projects. Therefore, under the well established rules of construction, we have hereinabove ruled that such words may be read into the act. Therefore, hereinafter we shall refer to the State Appropriation Act as if same contained the words "for the expenditure of".

The question now is as follows: How to define the words "for securing the expenditure of Federal funds for construction work in State parks". In order to determine how this demand shall be fulfilled, it will require the examination of

the Federal act, rules and regulations and other agreement or contract these parties enter into. For instance, such agreement or contract may only require such expenditure as is required to prepare a proposal and specification by engineers and draftsmen, or it may require the State Park Board to guarantee and assure the Federal agency that they will meet a certain percentage of the total expenditure and such guarantee may be necessary before the Federal agency will enter in such agreement or contract.

The 76th Congress of the United States enacted H. J. Resolution No. 544, as found in Chapter 432, page 608, U. S. Code Congressional Service. In this act, under Section 1 (a) an appropriation was made to the Works Progress Administration for the fiscal year ending June 30, 1941 for the purpose to continue to provide for work for needy persons on useful public projects.

Section 1 (b) of the same act provides, that these funds made available shall be used for the prosecution, among other things, of the work in State Parks. Other recreational facilities are subject to the approval of the President of the United States. It further provides, that preference should be given to projects which will contribute to the rehabilitation of individuals, forestation, reforestation and other improvements of forest areas.

Section 1 (c) limits the cost of such projects. This provision provides that costs, exclusive of administration expense and other than labor on any State project, shall not exceed the average for the fiscal year ending June 30, 1941 of \$6.00 per month per worker, and under no circumstances shall it exceed \$7.00 per month per worker and, further provides that such funds appropriated shall not be used for the purpose of any construction equipment or machinery in any case.

Section 1 (d) provides that the United States shall not furnish money to exceed three-fourths of the total costs of any non-Federal project to be undertaken in the states after June 1, 1940, and that not less than one-fourth of such total costs shall be borne by the State and its political sub-divisions.

Section 10 (c) further provides that no non-Federal project shall be undertaken unless and until this sponsor has made a written agreement to fulfill such part of the entire cost thereof as the head of the agency determines, under the circumstances, is adequate contribution. Also the head of the agency shall promulgate rules and regulations specifying the valuation of contributions, in kind, by sponsor for the use of sponsors and facilities, equipment and services of their employees.

Section 13 thereof further authorizes Federal agencies, receiving appropriations under this joint resolution, to prescribe rules and regulations as may be necessary to carry out the purposes for which such appropriations are made.

Section 24 provides that none of these appropriation funds, available under this act, shall be used "* * * (b) for the operation of any project sponsored solely by the W. P. A. * * *."

This is the usual procedure for the expenditure of Federal funds for construction work in State parks. The State Park Board prepares a proposal in the beginning containing the total cost of such project, specifications, etc., what material, equipment, technical services, etc. they shall furnish or what percentage of the cost they consider they can furnish. Such proposal is then presented for approval of the Federal agency. If said proposal meets with their approval, an agreement and contract is entered into by both parties.

From the foregoing Joint Resolution, it conclusively disposes of any thought that the State Park Board may secure the expenditure of Federal funds for construction work in State Parks in Missouri by merely furnishing a proposal and specification for a project.

This resolution specifically provides no such project shall be sponsored entirely by this appropriation. Further that the Federal agency shall not expend more than three-fourths of the total cost of such project; that the State or political sub-division shall furnish not less than one-fourth of the total cost of such project and; it further

provides that no such project shall be undertaken unless and until the sponsor, in this case the State Park Board has made a written agreement to finance such part of the entire cost thereof as the agency shall determine is adequate. A copy of the certificate and agreement is hereto attached.

Further, it is a well established rule of construction that the Legislature, when it enacts a statute, knows the existing laws. In *Reed vs. Goldneck*, 84 S. W. 1104, 112 Mo. App. 310, 1. c. 313, the court said:

"This being the settled law at the time the statute was enacted, we must presume that the Legislature knew the law as it existed, and sought to make some change therein by statutory innovation".

Also in *Smith vs. Pettis County*, 136 S. W. (2d) 282, 1. c. 287, the court, in holding that a statute limiting the fees that a probate court might retain in a year, held that the reviewing court would assume that the Legislature was familiar with probate law and practice in a general way. In so holding the court said:

"The fees collected by probate judges are of public record. We must assume that the legislature was familiar with them when they adopted these provisos. We may also assume that the legislature was familiar with probate practice in a general way. For instance, that estates could not be finally settled until after a lapse first of two years and now of one year. Where there is litigation estates remain open for indefinite periods. Estates of minors under guardianship may remain open for almost twenty-one years; estates of insane persons much longer. Therefore, the collection of fees previously earned may be long postponed. It would be and is unlikely that sufficient fees

could be collected in the first years or perhaps during the entire four years of the term to reach the amount allowed. Moreover, a probate judge is specifically prohibited by this same section from collecting fees in advance. Before the limitation of these provisos was imposed probate judges would continue to collect fees long after the expiration of their terms. These matters all must have been considered. This court itself has judicially noticed the delays which ensue between the time a circuit clerk earns his fees and his actual collection of them in State ex rel. Emmons v. Farmer, 271 Mo. 306, 196 S. W. 1106."

Therefore, we must assume that the 61st General Assembly was familiar with the rules and regulations and acts of the United States, requiring the sponsor to agree and contract to pay their full share of the total cost of such projects and that same was a necessary prerequisite to securing the expenditure of Federal funds for such projects.

While it only goes to show the legislative intent, we have been assured by representatives of the Works Progress Administration, that they appeared before the chairman of both appropriation committees of the 61st General Assembly and that the sole reason for the Legislature enacting such appropriation act was because of the fact the Federal Government required the State of Missouri to assure them that such appropriation would be passed for the purpose of paying the sponsors full share of projects in the State parks in Missouri, or that they would be forced to discontinue such projects and this would naturally force many persons upon unemployment.

CONCLUSION

Therefore, it is the opinion of this department that for the State Park Board to comply with the requirement of Section 74, House Bill No. 66, supra, it will necessitate the State Park Board expending so much of the appropriation in Section 74, House Bill No. 66, as is necessary to require the Federal agency under the law to expend Federal funds in State parks, which amounts to the sponsors share of

May 16, 1941.

the total cost of various projects in the State parks, which the State Park Board has already agreed and entered into a contract with Federal agencies.

In this opinion we shall not attempt to designate what expenditures are valid under such agreements. That will require an examination of each respective proposal, agreement and contract entered into by the respective parties thereto.

Respectfully submitted,

AUBREY R. HAMMETT, Jr.
Assistant Attorney General

APPROVED:

VANE C. THURLO
(Acting) Attorney General

(Signed by)
General M. H. ...

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