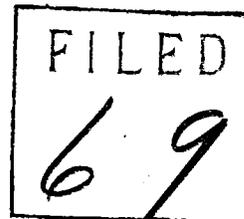


APPROPRIATIONS:

STATE ELEEMOSYNARY INSTITUTIONS:

Sections 2,5,6 and 7 of H.B. 270  
of 63rd General Assembly invalid;  
President of Board of Managers  
of State Eleemosynary Institu-  
tions should disregard same.

October 11, 1945



Honorable W. R. Painter  
President  
Board of Managers  
State Eleemosynary Institutions  
Jefferson City, Missouri

Dear Governor:

We have your letter of recent date which reads  
as follows:

"I desire to call your attention to Section Two, Section Five, Section Six, and Section Seven of House Bill 270 appropriating money for various hospitals in the city of St. Louis, Kansas City, and County hospitals. Each of these sections provides for the payment under certain sections of the Statute which are named in said section.

"I desire to call your attention to lines 12, 13, 14, 15, and 16 in Section Two; lines 13, 14, 15, 16, 17, and 18 Section Five; lines 12, 13, 14, and 15, 16, and 17, in Section Six; lines 13, 14, 15, 16, and 17 in Section Seven all of them being identical. There is no law in the statute books that requires the President of the Board of Managers of the State Eleemosynary Institutions to certify any of these accounts except these lines in the appropriation bill and they are invalid, as I understand it, as enactment of law is not allowed in the appropriation bills."

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"At the meeting of the Appropriation Committee I asked for funds to investigate these bills, which they refused to give me. The Eleemosynary Board has no funds with which to pay for the examination of these accounts. I am not doubting the correctness of the accounts, I mean that I should not certify this account unless it has been investigated and can really certify to its being a fact.

"I wish that you would give me your opinion as to my duty in this matter."

H.B. 270 is an Appropriation Act. Its title reads as follows:

"Appropriating money for the support of the Eleemosynary Institutions of the State, Commission for the Blind, Pensions for the Deserving Blind, Charity Patients at County Hospitals, for the period beginning July 1, 1945 and ending June 30, 1946, with an emergency clause."

Each of said Sections contain a proviso which undertakes to require an approval by you before any of the funds provided therein shall be audited and paid by the State. The provisos in Sections 5, 6 and 7 are identical in language, and the proviso in Section 2 has the same effect as those in the other Sections. The proviso in Sections 5, 6 and 7 reads as follows:

"PROVIDED, the State Auditor shall not audit, and the State Treasurer shall not pay any claim out of this appropriation to any such hospital unless such claim has first been examined and approved by the President of the Board of Managers of State Eleemosynary Institutions."

You submit the question as to what your duties are in view of the said provisos. It is first necessary to determine whether said provisos are valid and binding.

It is well-established in this State that general legislation cannot be included in an Appropriation Act. In *State ex rel. vs. Thompson*, 316 Mo. 272, 289 S.W. 338, the Court was considering an Act which appropriated money for payment of salaries of the personnel of the Board of Permanent Seat of Government. Said Appropriation Act also contained the following provision:

"Sec. 100. Salary--How Determined.--  
No salary for any official or employee, either elective or appointive, provided for by this appropriation act, shall be in excess of the salary provided by statutory law for such official or employee, and in all cases where the salary of any such official or employee is not definitely fixed by statutory law, no salary paid by virtue of this appropriation act shall be in excess of the salary paid to the officer or employee holding such position the previous biennium."

In discussing the foregoing provision the Court said: 289 S.W. 338, l.c. 340:

"It is manifest that the real purpose of this provision was an undertaking to regulate, determine, and fix the salaries of all such officers or employees affected by the Appropriation Act, whose compensation might not be fixed at all by statutory law, or, if at all, where the statute fixed a maximum only. This provision has no other character than that of general legislation, and to inject general legislation of any sort into an appropriation act is repugnant to the Constitution (article 4, Sec. 28, Constitution of Mo.), and the appropriation

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bill, as provided by the Constitution (article 4, Sec. 28), may have a plurality of subjects, while a bill for general legislation may have but one.

"An appropriation bill is just what the terminology imports, and no more. Its sole purpose is to set aside moneys for specified purposes, and the lawmaker is not directed to expect or look for anything else in an appropriation bill except appropriations. \* \* \* \* \* Here we have an appropriation act which not only appropriates money for the various subjects embraced therein, but which attempts to fix and regulate all salaries affected by the act which either have not been fixed by any statute, or not definitely fixed, which would include all salaries where the maximum alone was named. That the Legislature has the right by general statute to fix salaries is beyond question, but has it the right to do so by means of an appropriation act? We think not."

\* \* \* \* \*

"Our Constitution (section 28, art. 4), is the one certain safeguard against such distracting possibilities and should be strictly followed. We hold, therefore, that section 100 of the appropriation Act, under our Constitution, is unconstitutional and void, and it follows that our peremptory writ of mandamus should be granted."

The ruling in the above case was followed in the case of State ex rel. vs. Smith, 325 Mo. 1069, 75 S.W. (2d) 828, where the Court said, 75 S.W. (2d) 828, l.c. 830:

"Besides, legislation of a general character cannot be included in an appropriation bill. If this appropriation bill had attempted to amend

section 13525, it would have been void in that it would have violated section 28 of article 4 of the Constitution which provides that no bill shall contain more than one subject which shall be clearly expressed in its title. There is no doubt but what the amendment of a general statute such as section 13525, and the mere appropriation of money are two entirely different and separate subjects. State ex rel. Hueller v. Thompson, State Auditor, 316 Mo. 272, 289 S.W. 338."

Both of the above cases were followed in State ex rel. vs. Canada, 342 Mo. 121, 113 S.W. (2d) 783, where the Court said, 113 S.W. (2d) 783, l.c. 790:

"\* \* \* A general statute (section 9622, R.S. 1929 (Mo.St. Ann. Sec. 9622, p. 7328)) authorizes the board of curators of Lincoln University to pay the reasonable tuition fees of negro residents of Missouri for attendance at the university of any adjacent State. This statute cannot be repealed or amended except by subsequent general legislation. Legislation of a general character cannot be included in an appropriation bill. To do so would violate section 28 of article 4 of the Constitution, which provides that no bill shall contain more than one subject which shall be clearly expressed in its title. There is no question but what the mere appropriation of money and the amendment of section 9622, a general statute granting certain authority to the board of curators, are two different and separate subjects. State ex rel. Davis v. Smith, 335 Mo. 1069, 75 S.W. (2d) 828; State ex rel. Hueller v. Thompson, 316 Mo. 272, 289 S.W. 338. \* \* \* "

The judgment in the latter case was reversed by the U. S. Supreme Court, but said reversal did not affect the above portion of the opinion (305 U. S. 337, 83 L. Ed. 208).

H.B. 270 is designed to appropriate money for certain specific purposes, but the provisos referred to above are designed to provide certain methods to be followed by officers in connection with the disbursement of such funds. Regulating the duties of officers is a matter of general legislation, and, therefore, has no place in an Appropriation Bill.

Section 9360, R.S. Mo. 1939, reads as follows:

"Any county or city in this state which shall maintain from public funds a hospital for the care, detention or treatment of the insane, which hospital is properly equipped as to facilities, staff and personnel, shall be entitled to \$8.00 per month per patient, upon proper report filed and sworn to by superintendent or surgeon in chief of such hospital for the insane, when such proper report is filed with the state eleemosynary board. Such reports shall be filed quarterly and shall show name, address and other necessary data so as to properly identify and authenticate the patients of such insane institution."

Section 9361, R.S. Mo. 1939, authorizes the State Eleemosynary Board to examine the list of patients referred to in Section 9360, so as to determine if said list is correct and authentic. Neither of said Sections requires the State Eleemosynary Board nor any officer thereof, to approve said list before payment can be made. Section 9360 expressly provides payment shall be made "upon proper report filed and sworn to by superintendent or surgeon in chief of such hospital for the insane, when such proper report is filed with the state eleemosynary board."

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The effect of the proviso in Section 2 of H.B. 270 would be to add another requirement to the method provided for in Sections 9360 and 9361, supra, before disbursements could be made out of the funds appropriated by said Section 2.

Section 15178, R.S. Mo. 1939, provides that the money appropriated for payment of the patients in hospitals mentioned in Section 5 of H.B. 270, shall be disbursed as follows:

"\* \* \* The chairman and secretary of such board of commissioners shall make report to the treasurer of said board, once per month, giving the names and number of patients in such hospital and indicating which patients are subjects of charity and the amount necessary for the state to pay. The treasurer of said board shall issue a voucher to the state auditor, giving this information; and the auditor shall draw his warrant on the state treasurer for the amount shown by such statement, and the state treasurer shall pay said warrant to the treasurer of said board of tuberculosis hospital commissioners;  
\* \* \* ."

It will be seen therefore, that the proviso in Section 5 of H.B. 270, would add an additional requirement to be performed before disbursement of the funds in said Section 5 mentioned could be disbursed, and, therefore, would be in effect, an Amendment of Section 15178.

Section 15181, R.S. Mo. 1939, controls the disbursement of funds appropriated by Sections 6 and 7 of H.B. 270.

Said Section provides, in part, as follows:

"\* \* \* The director of the department of public health of such city shall make a report to the city treasurer once per month giving the names, addresses, and hospital numbers of

charity patients in such hospital and the amount necessary for the state to pay. The treasurer of the board shall issue a voucher to the state auditor giving this information and the auditor shall draw his warrant on the state treasurer for the amount shown by such statement and the state treasurer shall pay said warrant to the treasurer of said city, who shall deposit and credit the same to the credit of such hospital for the support of such charity patients, and for no other purpose.\* \* \*

The effect of the proviso in said Sections 6 and 7 of H.B. 270 would be to add an additional requirement to be met before disbursements could be made under said Sections, and, therefore, said provisos are an attempt to amend Section 15181.

How and when the funds appropriated for the purposes set forth in Sections 2, 5, 6 and 7 of H.B. 270 shall be disbursed is therefore, provided for by the above general statutes, and the provisos under consideration amount to an attempt to amend said general statutes by making additional requirements to be met before disbursements may be made. Under the decisions of the Supreme Court above referred to, such Amendment cannot be accomplished by an Appropriation Act, and, therefore, the provisos in Sections 2, 5, 6 and 7 of H.B. 270 are invalid, and of no effect.

The fact that the provisos above referred to are invalid, does not affect the appropriations made by said Sections of H.B. 270, however, in State ex rel. vs. Thompson, 289 S.W. 338, l.c. 341, the Court said:

"The question remains, Does the invalidity of said section 100 render the entire Appropriation Act void? We hold that it does not. It is well settled that a legislative act may be void in part, leaving the remainder a good and valid statute, where the part that is valid may be separated from the part that is void. State ex rel. v. Gordon, 236 Mo. loc. cit. 170, 139 S.W. 403; State ex rel. v. Taylor, 224 Mo. 474, 123 S.W. 892."

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Likewise, in State ex rel. vs. Canada, 113 S.W. (2d) 783, l.c. 790, the Court said:

"\* \* \* The valid and invalid portions of the statute are separable. If we disregard the invalid proviso, there is left a complete workable statute which appropriates the sum of \$10,000 for the purposes therein named. \* \* \* "

Ordinarily, it is not the duty of a public officer to question the validity of statutes. It is his duty to obey the statutes as enacted by the Legislature until the Courts have declared such statutes invalid. However, in your situation you are confronted with two inconsistent statutes governing the same subject, to-wit, the method of disbursement of particular funds. You, of necessity, must therefore question one of the statutes, and refuse to follow it. You have no other alternative, and you must therefore determine which of the two conflicting statutes you are to follow in the situations you present in your letter.

#### CONCLUSION.

It is, therefore, the opinion of this office that the provisos in Sections 2, 5, 6 and 7 of H.B. 270 of the 63rd General Assembly, are invalid, and should be disregarded, and that disbursements of funds appropriated by each of said Sections should be made in accordance with the provisions of the general statutes referred to in said Sections, said general statutes being Sections 9360, 15178 and 15181, R.S. Mo. 1939, respectively.

Respectfully submitted,

APPROVED:

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