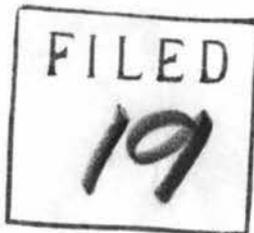


APPROPRIATIONS:

BI-STATE DEVELOPMENT AGENCY:

Sec. 4, S.B. 99, 65th General Assembly does not prohibit 66th General Assembly from passing appropriation act effective on or before December 31, 1951 for use of Bi-State Development Agency. Such appropriation may be lawfully obligated during fiscal period described in appropriation act.



November 20, 1951

11-20-51

Honorable Bert Cooper
Director, Department of Business and Administration
State Office Building
Jefferson City, Missouri

Dear Sir:

The following opinion is rendered in reply to your recent inquiry reading as follows:

"The 65th General Assembly in Senate Bill No. 99, enacted a law 'Providing for the State of Missouri to enter into a compact with the State of Illinois for the establishment of a Bi-State Development District and the creation of a Bi-State Development Agency; and setting forth in full the terms of such compact, with an emergency clause.'

"In Section IV of this law, as shown on Page 562 of the 1949 Laws of Missouri recites:

'Provided, that no appropriation of moneys from state funds in support of the Bi-State Agency herein created or in support of the project provided for in the compact herein set out shall ever be made by the State of Missouri after December 31, 1951.'

"From the reading of the foregoing, it appears that the Legislature could make an appropriation for this purpose up to and including the expiration date. Also, under the terms of the Constitution, Article IV, Section 28, the Bi-State Development Agency would have until July 1, 1953 for making expenditures under

Honorable Bert Cooper

the terms of the appropriation and a six months period thereafter for any anticipated expenditures that were committed on the Comptroller's books prior to July 1, 1953.

"The House of Representatives, in making its appropriation for this Agency, made it for a period beginning July 1, 1951 and ending June 30, 1953. When House Bill No. 5, Section 4.370 reached the Senate, the appropriation was cut from \$24,850.00 to \$6,250.00, with some of the Senators giving the opinion that under the terms of Senate Bill No. 99, Section IV, no expenditures could be made by this Agency after December 31, 1951.

"To me, this does not seem to follow out the purpose of the law or the Constitution.

"I am soliciting you for a Legal Opinion, as follows:

- "1. Can the Legislature make an appropriation for the use of the Bi-State Development Agency between now and December 31, 1951 for a sufficient amount for it to function for the remainder of this biennial period?
- "2. If such appropriation is made, can the Comptroller legally approve such requisitions that may be made for expenditure of the appropriation during the remainder of this biennial period?

"In as much as the Legislature is now in session and may adjourn soon, I would appreciate your early attention to this matter."

The Constitution of 1945 made marked changes in the handling of state finances. Theretofore appropriations had been made for biennial periods, that is, for periods of two calendar years. The Constitution of 1945 prescribed a fiscal year for the state which runs from July 1 of one year to June 30 of the following

Honorable Bert Cooper

year. Section 23 of Article IV of such Constitution provides:

"The fiscal year of the state and all its agencies shall be the twelve months beginning on the first day of July in each year. The general assembly shall make appropriations for one or two fiscal years, * * *."

Under the foregoing quoted provision of the Constitution it is within the power of the General Assembly to limit its appropriation to one or two fiscal years. Once the appropriation is made it runs for the period referred to in the appropriation bill. Expenditure of such an appropriation is governed by Section 28 of Article IV of the Constitution which provides:

"No money shall be withdrawn from the state treasury except by warrant drawn in accordance with an appropriation made by law, nor shall any obligation for the payment of money be incurred unless the comptroller certifies it for payment and the state auditor certifies that the expenditure is within the purpose of the appropriation and that there is in the appropriation an unencumbered balance sufficient to pay it. At the time of issuance each such certification shall be entered on the general accounting books as an encumbrance on the appropriation. No appropriation shall confer authority to incur an obligation after the termination of the fiscal period to which it relates, and every appropriation shall expire six months after the end of the period for which made."

The last sentence in the preceding quotation provides that "no appropriation shall confer authority to incur an obligation after the termination of the fiscal period to which it relates." That is to say, that at any time during the fiscal period or periods for which an appropriation is made, obligations can be incurred against said appropriation, but such obligations cannot be incurred after the expiration of said fiscal period or periods. The appropriation itself does not expire until six months after the end of the fiscal period or periods for which it was made.

Honorable Bert Cooper

That means that the appropriation is available for six months beyond said fiscal period or periods for the payment of obligations which were legally incurred during such period or periods. In other words, obligations incurred on behalf of the state must be paid out of appropriations made for the period or periods in which said obligations are incurred, and if such obligations are legally incurred, they can be paid at any time during said period or periods and six months thereafter.

Section 4 of Senate Bill No. 99, passed by the 65th General Assembly, does contain the proviso as quoted above in the opinion request. Without determining what force and effect this proviso may have as a prohibition directed to General Assemblies succeeding the 65th General Assembly, we accept the language of such proviso as written and give to it the ordinary and accepted meaning conveyed by the language used. Such proviso reads as follows:

"* * * Provided, that no appropriation of moneys from state funds in support of the Bi-State Agency herein created or in support of the project provided for in the compact herein set out shall ever be made by the State of Missouri after December 31, 1951."

The clear language used in the proviso quoted above does nothing more or less than prohibit an appropriation subsequent to December 31, 1951. In the case of *Allen v. City of Cambridge*, 55 N.E. (2d) 925, the Supreme Judicial Court of Massachusetts had before it a statute providing

"'during the period covered by this act * * * no * * * increase in salary except regular step-rate increases, shall be made in any appointive office, position or employment in the service of said city.'"

The court said, l.c. 928:

"* * * Whenever the increase was to take effect, the increase was 'made' by ordinances enacted within the period during which any such increase of salary was forbidden by the statute. * * *"

Honorable Bert Cooper

If the present 66th General Assembly desires to pass an appropriation act within the time limit set forth in the proviso, certainly no violation thereof would be evident.

CONCLUSION

It is the opinion of this department that the 66th General Assembly may make an appropriation by an enactment effective on or before December 31, 1951 for the use of the Bi-State Development Agency, without contravening the directive found in Section 4 of Senate Bill No. 99, passed by the 65th General Assembly, and expenditures from such appropriation may be made to cover obligations legally incurred during the fiscal period set out in the appropriation act, such period not to exceed two years after July 1, 1951.

Respectfully submitted,

JULIAN L. O'MALLEY
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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