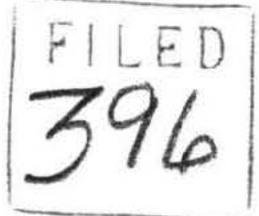


- 12/10/64
no. 396

CONSTITUTIONAL LAW: Proposed legislation relating to the establish-
FINE ARTS: ment of the Missouri State Council on the Arts
CULTURE: and defining the council's powers and duties
does not violate the provisions of the Constitu-
tion of Missouri prohibiting the granting, giving
or lending of public money, property or credit to
private persons, associations or corporations.

December 10, 1964

OPINION NO. 396



Honorable John M. Dalton
Governor of Missouri
Executive Office
Jefferson City, Missouri

Dear Governor Dalton:

You have requested an opinion of this office on the question of whether certain proposed legislation relating to the establishment of the Missouri State Council on the Arts and defining the council's powers and duties violates the Missouri constitutional prohibitions against the granting, giving or lending of public money, property or credit to private persons, associations or corporations. The proposed legislation reads as follows:

"AN ACT

"Relating to the establishment of the Missouri State Council on the Arts and defining the Council's powers and duties.

"Be it enacted by the General Assembly of the State of Missouri, as follows:

"Section 1. There is hereby created and established a state commission, to be known as the 'Missouri State Council on the Arts', to consist of twenty-five members, broadly representative of all fields of the performing and fine arts, to be appointed by the governor from among citizens of Missouri who are widely known for their professional competence and experience in connection with the performing and fine arts. In making such appointments, due consideration shall be given to the recommendations made by representative civic, educational and professional associations and groups, concerned with or engaged in the production or presentation of the performing and

Honorable John M. Dalton, Governor

fine arts generally.

"Section 2. The term of office of each member shall be five years; provided, however, that of the members first appointed, five shall be appointed for terms of one year, five for terms of two years, five for terms of three years, five for terms of four years and five for terms of five years. Other than the chairman, no member of the council who serves a full five-year term shall be eligible for reappointment during a one-year period following the expiration of his term. The governor shall designate a chairman and vice-chairman from members of the council, to serve as such at the pleasure of the governor. The chairman shall be chief executive officer of the council. All vacancies shall be filled for the balance of the of the (sic) unexpired term in the same manner as original appointments.

"Section 3. The chairman may employ, with the approval of the council, such officers, experts and other employees as may be needed and shall fix their compensation within the amounts made available for such purposes.

"Section 4. The duties of the council shall be:

"(1) To stimulate and encourage throughout the state the study and presentation of the performing and fine arts and public interest and participation therein;

"(2) To make such surveys as may be deemed advisable of public and private institutions engaged within the state in artistic and cultural activities, including but not limited to, music, theater, dance, painting, sculpture, architecture, and allied arts and crafts, and to make recommendations concerning appropriate methods to encourage participation in and appreciation of the arts to meet the legitimate needs and aspirations of persons in all parts of the state;

"(3) To take such steps as may be necessary and appropriate to encourage public interest in the cultural heritage of our state and to expand the state's cultural resources; and

Honorable John M. Dalton, Governor

"(4) To encourage and assist freedom of artistic expression essential for the well-being of the arts.

"Section 5. The council is hereby authorized and empowered to hold public and private hearings, to enter into contracts, within the limit of funds available therefor, with individuals, organizations and institutions for services furthering the educational objectives of the council's programs; to enter into contracts, within the limit of funds available therefor, with local and regional associations for cooperative endeavors furthering the educational objectives of the council's programs; to accept gifts, contributions and bequests of unrestricted funds from individuals, foundations, corporations and other organizations or institutions for the purpose of furthering the educational objectives of the council's programs, to make and sign any agreements and to do and perform any acts that may be necessary to carry out the purposes of this act. The council may request and shall receive from any department, division, board, bureau, commission or agency of the state such assistance and data as will enable it properly to carry out its powers and duties her[e]under.

"Section 6. The council shall make an interim report to the governor and the legislature not later than December 31, 1966, and from time to time thereafter.

"(A specific request for an annual appropriation of \$250,000 will accompany the final draft of the bill.)"

Section 38a, Article III, Constitution of Missouri, 1945, states in part,

"The general assembly shall have no power to grant public money or property, or lend or authorize the lending of public credit, to any private person, association or corporation, excepting aid in public calamity, * * *" (various pensions, and other public assistance).

Section 39, Article III, Constitution of Missouri, 1945, states:

"The general assembly shall not have power:

"(1) To give or lend or to authorize the giving or lending of the credit of the state in aid or to any person, association, municipal or other corporation; * * *"

Honorable John M. Dalton, Governor

The proposed legislation does not, expressly or by necessary implication, authorize the Missouri State Council on the Arts to grant, lend or authorize the lending of public money, property or credit. Wherever in the proposed act the expenditure of money is mentioned, it is in terms of payment for services. There is no constitutional prohibition against expenditure of state money by the council for services, as there are no such prohibitions against the Highway Department with respect to paying contractors for building roads or against state institutions with regard to buying food, supplies, utility services and the like.

The proposed act does not permit grants, subsidies, gifts or scholarships to individual artists or to groups of artists, but authorizes payment for services and perhaps goods, in connection with the furtherance of the public policy expressed in the act to foster "the study and presentation of the performing and fine arts and public interest and participation therein".

We do not overlook the case of State ex rel Board of Control of St. Louis School and Museum of Fine Arts v. City of St. Louis, 216 Mo. 47, 115 S.W. 534. That case involved an ordinance of the City of St. Louis providing for a tax to support a proposed "Municipal Art Museum" which was actually a part of Washington University. The Supreme Court held that this would amount to a donation to Washington University, a private corporation, in violation of constitutional prohibitions against granting public money to private entities. Note that the case did not hold that public funds cannot be spent in support of art museums or other cultural activities operated as public enterprises. We feel that the cited case is no hindrance to the proposed legislation referred to in your inquiry.

CONCLUSION

It is the opinion of this office that proposed legislation relating to the establishment of the Missouri State Council on the Arts and defining the council's powers and duties does not violate the provisions of the Constitution of Missouri prohibiting the granting, giving or lending of public money, property or credit to private persons, associations or corporations.

The foregoing opinion, which I hereby approve, was prepared by my assistant Donald L. Randolph.

Yours very truly,


THOMAS F. EAGLETON
Attorney General