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ADDENDUM  
OPINION NO. 340-70

The Honorable Christopher S. Bond  
Governor of Missouri  
Executive Office  
State Capitol Building  
Jefferson City, Missouri 65101

Dear Governor Bond:

This constitutes an addendum to Opinion No. 340 issued to the Honorable Warren E. Hearnes on May 22, 1970, and affecting the powers of the office of the governor. Among other questions posed to this office in the request for that opinion was the following:

4. May the governor control by allotment and thereby reduce the distribution of such funds [to the public schools]?

The answer to the inquiry was stated so:

4. That the governor, at his discretion, may constitutionally control by allotment or other means and thereby reduce the expenditure of funds below their appropriations only when the actual revenues are less than the revenue estimates upon which the appropriations were based.

Article IV, Section 27, Missouri Constitution, provides:

The governor may control the rate at which any appropriation is expended during the period of the appropriation by allotment or other means, and may reduce the expenditures of the state or any of its agencies below their appro-

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priations whenever the actual revenues are less than the revenue estimates upon which the appropriations were based.

At the outset, that section appears to address two entirely separate controls--one relating to limiting the rate of spending and the other directed to restricting the total amount spent by any agency over the fiscal period.

Considering the latter power first, the governor is able to "reduce . . . expenditures . . . below . . . appropriations" in appropriate circumstances. Granting those words their clear and usual meanings, at least two possibilities regarding the exercise of the power suggest themselves. Specifically, the governor may consider the appropriations to any agency in the aggregate and simply reduce the departmental spending ceiling. Second, it is quite logical to extend that power to include a determination that agency spending from a specific appropriation must be reduced in case of a shortfall. Such an interpretation is consistent, in the opinion of this office, with the line item veto authority which is granted to the governor in the preceding section. It would go no further than to preserve the power of the executive to tailor the budget when necessary in case of a revenue shortfall to the same extent as was the case when submitted to him for approval originally.

The second control relates to restricting "the rate at which any appropriation is expended during the period of the appropriation by allotment or other means. . . ." The language suggests that the quarterly allotments outlined in Section 33.290 constitute but one method of rate control. Presumably, any method might be used, although the usual construction would limit the alternatives to those which are similar in nature to the allotment process according to the rules of ejusdem generis.

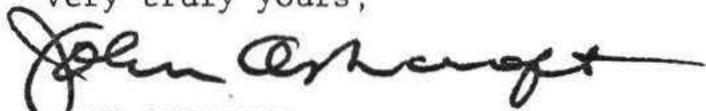
In light of these two separate powers, it should not be inferred from any portion of Opinion No. 340 that the constitutional authority to control the rate of expenditure is contingent upon the existence of a shortfall in revenues or that an action to control the spending rate of any agency must necessarily be linked to a reduction in the amount available to the agency for the entire fiscal year. Those controls might be exercised simultaneously, but need not be.

Accordingly, the opinion of this office with respect to the question posed by Governor Hearnest and quoted above may be restated as follows:

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4. That the governor, at his discretion, may constitutionally control the rate of expenditure of any appropriation through any fiscal year by allotment or other means. Furthermore, in any year in which actual revenues are less than the revenue estimates upon which appropriations were based, the governor, at his discretion, may reduce the expenditures of any agency below the amounts appropriated to the agency.

Very truly yours,

A handwritten signature in black ink, appearing to read "John Ashcroft", with a long horizontal flourish extending to the right.

JOHN ASHCROFT  
Attorney General