

June 14, 1971

Answer by letter-Wieler

OPINION LETTER NO. 64



Mr. Joseph Jaeger, Jr.
Director of Parks
Missouri State Park Board
P. O. Box 176
Jefferson City, Missouri 65101

Dear Mr. Jaeger:

This is in response to your request for an opinion concerning the administration and disbursement of federal funds received by this state under Public Law 89-665, popularly known as the National Historic Preservation Act of 1966 (16 U.S.C.A., Section 470, et seq.). Specifically, you have asked for our opinion as to the legality of your actions in depositing federal funds in the state treasury and subsequently having checks written to private individuals or private historic groups or political subdivisions, and whether such funds can be deposited in an "existing" account in the state treasury or whether a new account has to be created to provide for federal funds earmarked for "projects," as defined in the federal law. We assume your reference to "account" is a reference to an account established by the comptroller in compliance with an appropriation law.

16 U.S.C.A., Section 470 provides:

"The Congress finds and declares--

(a) that the spirit and direction of the Nation are founded upon and reflected in its historic past;

(b) that the historical and cultural foundations of the Nation should be preserved

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as a living part of our community life and development in order to give a sense of orientation to the American people;

(c) that, in the face of ever-increasing extensions of urban centers, highways, and residential, commercial, and industrial developments, the present governmental and non-governmental historic preservation programs and activities are inadequate to insure future generations a genuine opportunity to appreciate and enjoy the rich heritage of our Nation; and

(d) that, although the major burdens of historic preservation have been borne and major efforts initiated by private agencies and individuals, and both should continue to play a vital role, it is nevertheless necessary and appropriate for the Federal Government to accelerate its historic preservation programs and activities, to give maximum encouragement to agencies and individuals undertaking preservation by private means, and to assist State and local governments and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities."

16 U.S.C.A., Section 470a provides:

"(a) The Secretary of the Interior is authorized--

(1) to expand and maintain a national register of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, and culture, hereinafter referred to as the National Register, and to grant funds to States for the purpose of preparing comprehensive statewide historic surveys and plans, in accordance with criteria established by the Secretary, for the preservation, acquisition, and development of such properties;

(2) to establish a program of matching grants-in-aid to States for projects having as their purpose the preservation for public

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benefit of properties that are significant in American history, architecture, archeology, and culture; and

(3) to establish a program of matching grant-in-aid to the National Trust for Historic Preservation in the United States, chartered by act of Congress approved October 26, 1949 (63 Stat. 927), as amended, for the purpose of carrying out the responsibilities of the National Trust.

"(b) As used in sections 470 to 470b and 470c to 470n of this title--

(1) The term 'State' includes, in addition to the several States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(2) The term 'project' means programs of State and local governments and other public bodies and private organizations and individuals for the acquisition of title or interests in, and for the development of, any district, site, building, structure, or object that is significant in American history, architecture, archeology, and culture, or property used in connection therewith, and for its development in order to assure the preservation for public benefit of any such historical properties.

(3) The term 'historic preservation' includes the protection, rehabilitation, restoration, and reconstruction of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, or culture.

(4) The term 'Secretary' means the Secretary of the Interior."

Thus, it can be seen the National Historic Preservation Act of 1966 provides for federal funds on a matching basis in two areas, i.e., funds to the states for the purpose of preparing comprehensive statewide historic surveys and plans, and funds to the states for projects having as their purpose the preservation for public benefit of property that is significant in American history, architecture, archeology, and culture. It is our understanding that

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these funds are channeled into the state treasury through you as state liaison officer for the project, having been named as such by the Governor, because of your position as Director of the Missouri State Park Board, the agency responsible for the preservation of historic sites in this state. See Chapter 253, RSMo 1969.

The Missouri legislature appropriated funds to provide matching state aid for the purpose of carrying out a statewide historic survey and plan in 1968 and has annually appropriated money for this purpose since. See Section 4.530, House Bill No. 4, Third Extra Session, 75th General Assembly. Also, at that time expenditures by the State Park Board out of federal funds from the National Historic Preservation Act of 1966 deposited in the state treasury were authorized. See Section 4.575, House Bill No. 4, First Extra Session, 74th General Assembly, as contained in Laws 1967, page 824. Annual legislation for this purpose has been passed since that date. See Section 4.535, House Bill No. 4, Third Extra Session, 75th General Assembly.

It is apparent then that the Missouri legislature has authorized the expenditure of all federal funds under the National Historic Preservation Act of 1966, whether such funds be for the purpose of the comprehensive survey or for projects involving the preservation of properties that are significant in American history, architecture, archeology, and culture; and that all funds received from the federal government for either purpose can be deposited in the existing account.

With respect to your request for an opinion concerning the legality of ordering checks written from the state treasury to private individuals or private historic groups or political subdivisions from federal funds earmarked for the purpose of carrying out "projects" as contemplated by the federal legislation, it is our opinion that such action is most certainly legal under applicable Missouri law.

The intent of Congress in this area is perfectly clear, the preservation of all sites, buildings or objects that are culturally or historically significant. To this end, the National Historic Preservation Act of 1966 authorizes the Secretary of Interior to establish programs of matching grants-in-aid to states for projects having as their purpose the preservation of such monuments. As shown above, the term "project" in this law means programs of state and local governments and other public bodies and private organizations and individuals for the acquisition of title or interest in, and for the development of, any district, site, building, structure, or object that is significant in American history, architecture, archeology, and culture, or property used in connection

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therewith, and for its development in order to assure the preservation for public benefit of any such historical properties.

A grant of federal funds to this state by the Secretary of Interior for such a project can be placed in the state treasury and expended therefrom, according to whatever terms and conditions the Secretary of Interior requires, under the provisions of Article III, Section 38(a) of the Missouri Constitution which provides:

". . . Money or property may also be received from the United States and be redistributed together with public money of this state for any public purpose designated by the United States."

Therefore, federal funds placed in the state treasury for "projects," as that term is defined in the National Historic Preservation Act of 1966 can be withdrawn pursuant to your requisition payable to private individuals or private historic groups or political subdivisions.

Yours very truly,

JOHN C. DANFORTH
Attorney General