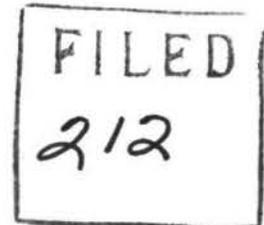


APPROPRIATIONS: The letters "FTE" used in appropriations for personal services in bills passed by the 77th General Assembly do not affect or restrict the authority of governmental units, to whom appropriations are made, to expend the sums appropriated for "personal services" for the number of employees provided for by general statutes or the number deemed necessary and proper by such governmental unit if the number of employees is not provided for by general statutes.

OPINION NO. 212

May 10, 1974

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



Dear Governor Bond:

This is in reply to your request for an opinion of this office asking several questions concerning certain letters which appear in C.C.S.H.B. No. 1004, 77th General Assembly. You state that an example of the use of these letters is found in Section 4.075 where there is an appropriation to the Department of Public Safety for personal service in the office of the director as follows:

"Personal Services (FTE 25) 140,740"

Your first question is what is meant by the letters "FTE."

We have carefully examined C.C.S.H.B. No. 1004, and other appropriation bills, and find no definition or explanation of these letters. Nor are we aware of any use of or definition or explanation of these letters in the Constitution of Missouri or any laws of Missouri. Therefore, it would appear that the letters "FTE" are without legal effect. However, since an appropriation bill is legislation, and the general rule of statutory construction is to determine the intent of the legislature by applying to the words used their ordinary meaning, and since commonly used abbreviations could fulfill this requirement, we have also examined the various dictionaries to determine if the letters "FTE" are generally understood as to their meaning. Again, we find nothing to suggest what "FTE" means. There are, of course, certain words attributed to the individual letters "F," "T," and "E," but there is no commonly understood meaning to these letters individually which in any combination suggest what the legislature had in mind.

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This does not completely leave the meaning unresolved since you have further informed us that you believe the letters mean "full-time equivalent," and that this phrase appears in the instructions for preparation of personal service details in the budget forms developed by the Office of Administration. That definition is set out as follows:

Full-time Equivalent Computation:

The full-time equivalent number for existing positions as well as project employees will be computed in the following manner. A full-time equivalent employee is one working a full year, less vacation and holidays. For most agencies, a full-time position will be occupied by an employee working 233 days per year at 8 hours per day. An employee (existing positions or project employee) working less than this amount will be designated by showing the appropriate fractional number in the "full-time equivalent" column.

The meaning of "FTE" in C.C.S.H.B. No. 1004 is still, in our opinion, legally unclear, but for purposes of further discussion, we will assume it means "full-time equivalent" as defined above.

Keeping in mind the prohibition against enacting general legislation in an appropriation bill (See Article III, Section 3, Constitution of Missouri, and State ex rel. Davis v. Smith, 75 S.W.2d 828, 830 (Mo. 1934)), the next question is what the legislature intended as to the effect of using "FTE 25" in Section 4.075.

It would appear, in order to give this some meaning (although again we find it difficult to know from "FTE 25"), that the \$140,740 for personal services is to pay the salaries for the equivalent of twenty-five full-time positions. If this is the case, you then ask if it is mandatory that this money only be spent for that number of full-time positions. In other words, does this language restrict the director of the Department of Public Safety to the equivalent of twenty-five full-time employees in the office of the director. If this is the intent, then one result, of course, is that there could not be more than that number of full-time employees. Therefore, the director apparently would not have the authority to pay twenty-five full-time employees less than the total \$140,740 in order to hire extra personnel.

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On the other hand, it would seem to follow that the director would not have the authority to use the entire \$140,740 for less than the twenty-five full-time positions, and thus, for example, pay twenty employees a higher salary than would be possible if the money was used for twenty-five positions.

If the above is the intent, it would appear in effect that the legislature is attempting to direct that the \$140,740 will be used for exactly twenty-five, or the equivalent, full-time employees. In other words, it would constitute, in an indirect manner, an attempt in an appropriation bill to set the number of employees and their salaries within the various divisions and agencies of the departments. Thus, it would follow that the \$140,740 appropriation for these twenty-five full-time employees must be based precisely upon specific information of the positions and the salaries established those positions. Since, in the case of personal services in the office of the director in the Department of Public Safety, such positions and salaries are not set by statute, the only possible source of such information would be in the budget estimates submitted to the legislature.

First, we do not believe that the legislature so intended to set the number of positions and the salaries in these appropriation bills. This is made plain by the manner in which the legislature made the reference "(FTE 25)." This reference, put in parenthesis, does not suggest a mandatory expression, but rather an explanatory note that the sum is appropriated based on the budget "estimate" of twenty-five full-time positions. We do not interpret this, therefore, as interfering with the usual authority of the department to which money is appropriated to exercise its authority and discretion in determining how the \$140.740 is spent, so long as it is spent for "personal services."

These budget "estimates" are required to be submitted to the legislature by Sections 33.210 through 33.290, RSMo, and Section 1.6(4) (a) and (b) of the "Omnibus State Reorganization Act of 1974."

Such budget estimates do not set salaries by position classification that are in any way binding either on the legislature for appropriations or on the departments to which appropriations are made. Any different conclusion would conflict with the intent and spirit of the "Omnibus State Reorganization Act of 1974" and, of course, the authority of the legislature to appropriate such sums as it deems necessary.

It is obvious that the use of budget forms are to advise the legislature of the estimated funds necessary for the departments so that the legislature can intelligently decide how much money

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the departments will need in the course of a fiscal year to perform their respective functions. We find nothing, however, to suggest that when appropriations are then made the money must necessarily be spent in the exact manner of the budget forms.

Assuming, however, that the legislature did so intend to set positions and salaries in the appropriation bills, you ask if this is valid. We think not for such would constitute general legislation in an appropriation bill which is prohibited by Article III, Section 3, Constitution of Missouri. See State ex rel. Davis v. Smith, supra; State ex rel. Gaines v. Canada, 113 S.W.2d 783 (Mo. Banc 1937), reversed on other grounds, 305 U.S. 337; and particularly State ex rel. Hueller v. Thompson, 289 S.W. 338 (Mo. Banc 1926) where the court said, l.c. 341:

". . . 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."

This language is equally applicable here where the legislature has attempted to set in the appropriation bills the number of positions as well as salaries. Therefore, we hold that if the designation "(FTE 25)" was meant to be restrictive, this is invalid as legislation in an appropriation bill. We have consistently so held and refer you to Opinion No. 152, 1974, Sikes, and to Opinion No. 189, 1974, Barbero, which discuss this principle, also in the context of attempts to limit executive authority. Opinion No. 189 is especially applicable in that the legislation, in question there, also was an attempt to limit expenditures in accordance with budget estimates.

Finally, we hold that this invalid portion of the appropriation bills is severable. Therefore, the appropriated sums for personal service are valid and can be expended but without restriction as to "(FTE 25)." See again Opinion No. 189, 1974, Barbero.

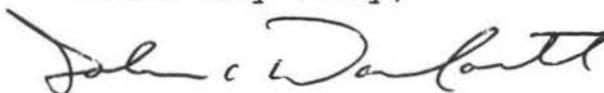
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CONCLUSION

It is the opinion of this office that the letters "FTE" used in appropriations for personal services in bills passed by the 77th General Assembly do not affect or restrict the authority of governmental units, to whom appropriations are made, to expend the sums appropriated for "personal services" for the number of employees provided for by general statutes or the number deemed necessary and proper by such governmental unit if the number of employees is not provided for by general statutes.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Walter W. Nowotny, Jr.

Yours very truly,



JOHN C. DANFORTH
Attorney General

Enclosures: Op. No. 152
3-27-74, Sikes

Op. No. 189
4-25-74, Barbero