

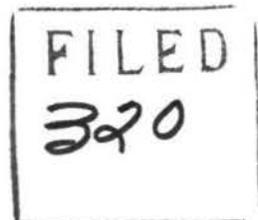
CONSTITUTIONAL LAW:  
STATE BUILDINGS:

The Wainwright Building architectural design contest does not violate Section 38(a) of Article III of the Missouri Constitution because the payment of prize money to the architects who submitted the winning designs for renovation and reconstruction of the Wainwright Building constituted a payment for services of the architects and not a gratuitous grant prohibited by the provisions of Section 38(a) of Article III.

OPINION NO. 320

October 31, 1974

Honorable Hayden Morgan  
State Representative, District 135  
Rural Route 2  
Nevada, Missouri 64772



Dear Representative Morgan:

This is in response to your request for an official opinion on the following question:

"Whether the award of prize money for the architectural design contest for the Wainwright Building is constitutional under Article III, Section 38A which provided; 'The General Assembly shall have no power to grant public money . . . to any private person, association, or corporation', except in certain specified cases."

The factual context out of which this question arises may be briefly summarized as follows: The state desires to renovate the Wainwright Building and to construct additional office space on the same city block. Because of the historic and architectural significance of the Wainwright Building, a contest was devised in order to secure the most appropriate design for the renovation and construction. Specifications for submissions were drawn up and a jury was chosen. The contest was established in two stages with only five finalists participating in the second stage of competition. The first prize winner is to be awarded the contract for architectural services at 7% of construction costs. Should the project not continue past competition, the first prize winner would receive a lump sum award of \$30,000.00.

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The second prize winner would receive \$12,500.00, the third prize winner \$7,500.00, and the two honorable mentions \$5,000.00.

The full text of Article III, Section 38(a) of the Missouri Constitution, is as follows:

"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, and general laws providing for pensions for the blind, for old age assistance, for aid to dependent or crippled children or the blind, for direct relief, for adjusted compensation, bonus or rehabilitation for discharged members of the armed services of the United States who were bona fide residents of this state during their service, and for the rehabilitation of other persons. 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."

A grant in ordinary usage can mean "to give or bestow, with or without compensation." Webster's New International Dictionary, Second Edition. We believe, however, that "grant" as used in Article III, Section 38(a) can only mean a transfer without compensation. There would be no reason to prohibit transfer of state money or property if the state received consideration therefor. This interpretation is buttressed by the exceptions contained in the section as all these exceptions are clearly gratuitous grants.

With this definition in mind, it is necessary to examine the legal nature of the contest to determine whether it involves such a gratuitous transfer. Contests of this nature are generally held to be contracts or, at the very least, are dealt with in contractual terms.

"Prizes are frequently offered in order to induce entries in competitive trials of strength, skill, knowledge, or other capacity. The making of an entry by a competitor is the acceptance of such an offer; and the bargain thereby made is a valid contract, and not a wager, if the offeror is not himself one of the competitors for the prize.

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Such a bargain contemplates the exchange of the amount of the prize and other requisite performances by the offeror, in return for the collective performances of all the competitors. It is true that the losing competitors will get nothing in exchange for their efforts; and if the transaction between the offeror and each entrant were regarded as a wholly separate one, it would be included within the definition of a wager. But it is not a wholly separate transaction: The prize is promised in order to induce the giving of a desired equivalent, this equivalent being the efforts of all the competitors together. Each competitor does, indeed, take the chance of getting nothing for his effort. But the offeror takes no such chance; whoever may be the winner, he gets exactly the same performance by the competitors in exchange for his money."  
6A Corbin on Contracts §1489, p. 656, (1962).

The case of Tilley v. City of Chicago and Cook County, 103 U.S. 155, 26 L.Ed. 374 (1881), involved a contest for the design of a building to be erected by the City of Chicago and Cook County. The court dealt with the issue in terms of contract law.

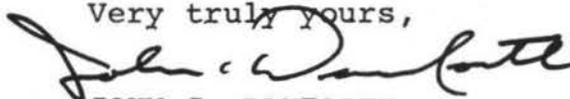
"By the payment to the plaintiff in error of the prize, the defendants discharged every obligation due from them to him arising out of the preparation of plans for the proposed building. . . ." Id. at 160.

#### CONCLUSION

It is the opinion of this office that the Wainwright Building architectural design contest does not violate Section 38(a) of Article III of the Missouri Constitution because the payment of prize money to the architects who submitted the winning designs for renovation and reconstruction of the Wainwright Building constituted a payment for services of the architects and not a gratuitous grant prohibited by the provisions of Section 38(a) of Article III.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Robert Presson.

Very truly yours,



JOHN C. DANFORTH  
Attorney General