

EMPLOYEES :
BUDGET LAW:

The power to administer budget law and hire employees and fix salaries vests in the Governor.

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Hon. Forrest Smith
State Auditor
Jefferson City, Missouri

Dear Mr. Smith:

This is to acknowledge receipt of your letter of September 27th, 1933, which reads as follows:

"On page 459, Sec. 1, of the 1933 Laws, it provides for a Budget Director, and on page 59 of the same Laws, is the appropriation set-up to pay salaries of the Budget Department.

Will you please advise our office what employees if any, and the salary, can be paid from this appropriation?"

Laws of Missouri, 1933, page 459, is an act which establishes an Executive Budget System for the State. It contains sixteen sections, was approved May 12th, 1933, without an emergency clause and became effective July 24th, 1933, or ninety days after the Legislature adjourned.

Section 16 of the act reads as follows:

"REPEALING SECTIONS 9832 to 9847, INCLUSIVE.--Sections 9832 to 9847, inclusive, Revised Statutes of Missouri, 1929, are hereby repealed."

Referring to the sections repealed in the 1929 statutes, we find an entirely different law relating to the budget. The 1929 statutes conferred such duty upon the Tax Commission. Some of the sections repealed are similar and incorporated in the

present act. We only invite attention to the repealed 1929 sections for the historical value they may have, their provisions being of no force and effect at the present time.

Laws of Missouri, 1933, page 459, Section 1, provides in part as follows:

"The Governor shall have full authority to carry out the provisions of this act and to do all things necessary thereto. * * * The Chairman of the State Tax Commission shall be ex officio budget director, and shall serve as such without additional compensation. * * * * *"

Other sections provide what work is to be done under the supervision of the Budget Director. Section 6, page 461, reads as follows:

"POWERS OF GOVERNOR-ELECT RELATIVE TO BUDGET.-- In any year in which a Governor is elected, the Governor shall permit the Governor-elect to examine and study all estimates and other budget information, and shall invite the Governor-elect to sit with him in conferences and hearings on the budget. The Governor-elect shall be entitled to make suggestions and the Governor may accept such suggestions or may incorporate them separately in the budget as the recommendations of the Governor-elect."

It is thus seen that the plan or scheme relative to the budget, under 1933 Laws, is vested in the Governor and the responsibility for administering its provisions reposes in him. But the Legislature did not provide, in so many words, for the employing of clerks or employees to do the clerical work entailed by virtue of the provisions of the act.

Laws of Missouri, 1933, Section 59, page 20, provides in part as follows:

"FOR DEPARTMENT OF BUDGET.--There is hereby appropriated out of the State Treasury, chargeable to the State Revenue Fund, the

sum of seventeen thousand dollars (\$17,000.00), or so much thereof as may be needed to pay the salaries, wages and per diem of employees engaged in the work of the Department of the Budget of Missouri, and other general expenses thereof, as follows:

- A. Personal Service:
- Chief Clerk, accountant, stenographer, janitor and other necessary employees \$10,000
- Etc."

It will be observed that the Legislature made provision, supra, for paying salaries for a "Chief Clerk, accountant, stenographer, janitor and other necessary employees", but limited the amount therefor to \$10,000. The question presents itself as to whether or not, and by what authority, such persons may be employed if the budget act is silent and only money appropriated to pay such. The law is well settled as stated in State ex rel. Buder v. Hackman, State Auditor, 265 S. W. 532:

"Before the State can be held liable for the payment of a fee or expense incurred in its behalf, the person or officer claiming such fee or expense must be able to point out the law authorizing such payment. (Cases Cited)"

In the present inquiry, such person, if employed, could point to the appropriation act as authority for payment for his services. However, before said person could do so, he would likewise have to show by what authority he was appointed. In the latter case he would not be able to do so unless it may be reasoned that the Governor by virtue of the first sentence in the act (Sec. 1, p. 459, Laws of Mo. 1933) has such authority. We requote: "The Governor shall have full authority to carry out the provisions of this act and to do all things necessary there-to." In other words, if we read into the act, keeping in mind the appropriation for the department of budget, that the Legislature intended the Governor to appoint persons to render services necessary to carry out the provisions of the act, then persons, thus employed, are thereby lawfully employed. We are of the opinion, and so hold, that the Governor, in matters relating to the budget, has the power and authority to appoint necessary help

to carry out the provisions of said act and that the amount to be paid to employees, thus appointed, shall not exceed, however, \$10,000 for the biennium for all such employees.

Having established the above premises, we are confronted as to what amount of salary such employee, or employees, shall receive. Again the act is silent, as likewise the appropriation. On the question of salaries paid other employees of the State, we would say Section 11768, R. S. 1929, is persuasive, however not conclusive. It is our opinion the Governor may also fix the amount of compensation of all employees hired by virtue of this act. While the administration of this act is left entirely to the discretion of the Governor as to hiring and fixing the amount of compensation of employees, yet, he is limited to \$10,000 during the biennium for the payment of all salaries.

Yours very truly,

James L. HornBostel
Assistant Attorney-General.

APPROVED: _____

ROY McKITTRICK
Attorney-General.

JLH:EG