

COMMISSIONER OF AGRICULTURE:

Legislature did not appropriate funds out of which premiums for various kinds of automobile protection and protection on property can be paid.

✓ Copy to Smith

#3449 in 30 Laws 33

October 5, 1933.

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Mr. J. C. Breshears,
Commissioner of Agriculture,
Jefferson City, Missouri.

Dear Sir:

We are acknowledging receipt of your two letters in which you inquire as follows:

"I. Desirous of keeping within the full spirit and interpretation of the laws and appropriations, please give your opinion on the following questions:

1.- Is the State, i. e., the State Department of Agriculture, within its rights to insure its state-owned automobiles used in official field work?

To be more exact, please add to your general opinion the following supplementary questions, as to the legality under our 1933-34 appropriations and the State Department of Agriculture laws, as to payment of automobile insurance premiums along the following lines:

- 1a--Liability insurance,
- 1b--Property damage insurance,
- 1c--Collision insurance,
- 1d--Fire and tornado,
- 1e--Theft,
- 1f--Glass damage.

2. - If unwarranted at law under available appropriations, would it be equitable and right to (a) pay up premiums on unpaid policies to date and discontinue insurance, and (b) should policies already paid in advance be cancelled and refund of premiums in any such case applied for? This is not a large proposition, since we have only ten state-owned light cars.

The question of state-owned automobile insurance is a factor in government costs, and we desire to be right on this question. We have certain pending bills for automobile insurance, under our new law, but we shall hold same until we hear from you, and for same this is to thank you, in advance."

"II. Please permit the following request for an opinion, serving as a rule in relation to the general

matter as to the Department of Agriculture, now starting and seeking to get started rightly:

1st--Is the Department of Agriculture warranted in carrying fire and tornado insurance in equipment or buildings, for instance, (a) rather valuable chemical laboratory equipment in rented quarters on 3rd floor of old 1st National Bank building, or (b) buildings at State Fair, under present laws and appropriations?

2nd--If unwarranted at law under available appropriations, would it be suitable and right to (a) pay up premiums on unpaid policies to date and discontinue insurance, and (b) should policies already paid in advance be cancelled and refund of premiums in any such case applied for?

In passing, outside this request, permit the remark that Mr. Jewell Mayes and I are strongly convinced that the chemical laboratory is badly located and that it should soon be moved into the old postoffice building, saving rental expense and avoiding the present rather bad risk as to fire and storm."

In as much as both of your inquiries deal with the same subject matter and depend upon the same appropriation for solution, we shall answer them together. Article 10, Section 19 of the Constitution of Missouri provides as follows:

"No moneys shall ever be paid out of the treasury of this State, or any of the funds under its management, except in pursuance of an appropriation by law, nor unless such payment be made, or a warrant shall have issued therefor, within two years after the passage of such appropriation act; and every such law, making a new appropriation, or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such sum or object. A regular statement and account of the receipts and expenditures of all public money shall be published from time to time."

Section 11421, R. S. Mo. 1929, provides as follows:

"No warrant shall be drawn by the auditor or paid by the treasurer, unless the money has been previously appropriated by law; nor shall the whole amount drawn for or paid, under any one head, exceed the amount appropriated by law for that purpose."

In 36 Cyc. 895, it is said:

"Appropriation Acts specify the purposes for which the

appropriation shall be used, and appropriations made for one purpose cannot be used for any other purpose."

Whether or not you may insure personal property and buildings which belong to the State and are under the jurisdiction and control of your Department depends on whether or not the Legislature has appropriated funds specifically providing for the payment of such items. In construing an appropriation measure the courts say that such appropriation must be strictly construed. In *Meyers v. Kansas City*, 18 S. W. (2d) 900, the court was considering an appropriation made by the Council of Kansas City and said at page 901:

"Another general rule in the construction of statutes, applicable as well to municipal ordinances, is that acts of the character here under review are to be strictly construed. The limitation upon the use of the appropriation in proposition 8 is such, by reason of its terms, that the invoking of the general rule is not necessary."

The Legislature in Laws of Missouri 1933, page 65, Section 3a made an appropriation in the total amount of \$21,250.00 for your Department. The appropriation is divided into four divisions: A. Personal Service, B. Additions, C. Repairs and Replacements, D. Operation. The only subdivision which, according to our judgment, could throw any light upon whether or not you have the right to take out the insurance in question is found in Section D, title "Operation," which is as follows:

"General expenses, including communication, printing and binding, transportation of things, travel, stationery, office supplies, special material and supplies, and other general expense \$5,000.00."

We believe that the above Section is the only one under which such expenditures might possibly come. We are of the opinion, however, that this Section of the appropriation Act is not broad enough and specific enough to entitle you to take out insurance on the personal and real property in question, for the following reasons:

It is true, at the outset, that the Legislature used the term "general expense." Immediately after the use of this term, however, it said that such term would include various items and proceeded to enumerate such items. The term "general expenses" is a broad term and used by itself would have been broad enough to include all of the items enumerated in Section D. When the Legislature, however, followed the words "general expenses" by the enumeration of the expenses found in Section D, we believe that such enumeration limited and qualified the scope of the term "general expenses." If the Legislature had not intended to limit the term "general expenses" and to confine it to the enumerated items, then it would have been use-

less for the Legislature to have made such enumeration, because the term "general expenses" unrestricted would have been sufficiently broad to cover all of the items listed in Section D.

At the close of Section D appears the words "other general expenses." We do not believe that the words "other general expenses" found in this Section, are of any assistance in making the appropriation cover the questions of insurance. The general rule is that where general words are followed by particular words, the general words will be restricted and limited to the particular words used. This rule has been applied in the construction of appropriations. In State ex rel. v. Dierkes, 214 Mo. 578, the Supreme Court had for consideration an appropriation under the St. Louis charter. The words in that appropriation which the relator relied upon were; "other expenses of the House of Delegates." The court, in discussing the matter, said at page 591:

"Now take either of the two appropriation ordinances in evidence, for they are both the same in words, except as to the last clause, we have no specific appropriation for this work or for this relator. Relator contends that the words 'other expenses of House of Delegates,' are sufficient to authorize the payment of this money out of the unexpended balance in that fund. The whole clause of the ordinance reads:

'Publishing proceedings, printing, stationery, office expenses, furniture, rent of telephone and other expenses of House of Delegates \$8,000.00.'

To our mind the rule of ejusdem generis fully applies here. The term 'other expenses' means expenses of the character theretofore mentioned in that clause of the appropriation act and does not include an appropriation for work of the character performed by relator. To hold that it did include such would be to nullify the provisions of Section 14, Article 5, of the city charter, supra."

Following the above decision, therefore, we are of the opinion that money appropriated by Section D can only be used for the purposes enumerated in Section D, or for items by reason of the similarity of which can be said to come within the enumerated classes under the rule of ejusdem generis. We do not believe that premiums for insurance, whether it be fire, liability, theft or otherwise, is similar enough to the enumerated items to bring it within the provisions of the appropriation. It does not come within the classification "transportation of things, travel" or any of the enumerated items. "Transportation of things" means the expense of transporting property of the

Mr. J. C. Breshears,

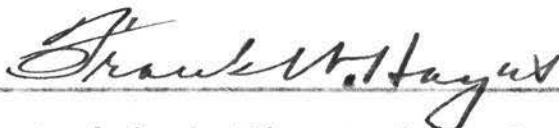
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State back and forth, and "travel" means the expense of traveling in the furtherance of the business of the State, including the expense of transportation, gasoline, oil, etc., as well as other items of travel. Whether or not the automobiles of your Department are insured has no connection with the transportation of things or travel. It may be that private enterprises, with a good business, might require that automobiles be insured against all of the contingencies contained in your letter. However, the State has not and does not always insure its personal and real property. The failure of the State to appropriate money for the purposes about which you inquire seems to indicate an intention in this instance that the State desires to carry its own insurance.

We are therefore of the opinion that the State has not appropriated funds out of which you may pay for the insuring of automobiles and other personal property or buildings. If we are correct in this view, then it would not be proper for you to pay premiums on unpaid policies because such premiums would not be properly chargeable to the appropriation in question. If the premiums have already been paid in advance out of this appropriation, we think it would be quite proper to cancel said policies and seek a refund of the premiums.

Very truly yours,



Assistant Attorney General.

APPROVED:

Attorney General.

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