

APPROPRIATIONS: Bureau of Building and Loan Supervision emergency fund construed.

✓ CSHE AB 11, Sec 48a Laws 33

December 6, 1933. 12/9

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Hon. Ira A. McBride
Supervisor
Bureau of Building and Loan Supervision
Jefferson City, Missouri

Dear Mr. McBride:

This is to acknowledge receipt of your letter which reads as follows:

"This is to request your opinion as to whether or not the emergency fund provided for in House Bill 642, Section 48a, can be counted as a part of the general appropriation to the Bureau of Building and Loan Supervision as set forth on page 94 of House Bill 650, Section 10, which appropriation is \$77,595 or is it to be construed that the \$25,000 revolving fund is an additional sum over and above the general appropriation of \$77,595.

It was my understanding and the interpretation given me by legislators that our appropriation for the Bureau of Building and Loan Supervision was \$77,595 and in addition to this sum, we had a revolving fund of \$25,000 as a reserve in case it was needed. The auditor's office, however, are in some doubt as to this interpretation of the extra \$25,000, therefore, this request for an opinion.

Since it is imperative for this department to know as to whether or not appropriations are adequate to take care of us for this

biennium, we would like to have your opinion at an early date so that we may take up with the Governor and the Legislature the correction of this matter in the event the \$25,000 revolving fund can not be used in addition to the appropriation of \$77,595, which is the general appropriation for this department."

The narrow question presented by your request is whether or not Section 48-a (Laws of Mo., 1933, page 18) is an appropriation over and above that appropriated for your Department by Section 10 (Laws of Mo., 1933, page 94).

I.

Laws of Missouri, 1931, pages 143-144, Section 5582, provides:

"All fees for examinations or supervision now provided for and required of building and loan associations under the laws of Missouri governing building and loan associations shall be paid into the state treasury to the credit of a fund to be known as the building and loan supervision fund."

The Constitution of Missouri, Article IV, Section 43, provides in part:

"All revenue collected and moneys received by the state from any source whatsoever shall go into the treasury, and the General Assembly shall have no power to divert the same, or to permit money to be drawn from the treasury, except in pursuance of regular appropriation made by law. * * * * *"

Constitution of Missouri, Article X, Section 15, provides in part as follows:

"All moneys now, or at any time hereafter, in the State treasury, belonging to the State, shall, immediately on receipt thereof, be deposited by the Treasurer to the credit of the

State for the benefit of the funds to which they respectively belong, in such bank or banks * * * * *

Laws of Missouri, 1933, page 415, Section 1, provides in part as follows:

"All fees, funds and moneys from whatsoever source received by any department, board, bureau, commission, institution, official or agency of the state government by virtue of any law or rule or regulation made in accordance with any law, shall, by official authorized to receive same, and at stated intervals be placed in the state treasury to the credit of the particular purpose or fund for which collected, and shall be subject to appropriation by the General Assembly for the particular purpose or fund for which collected during the biennium in which collected and appropriated. The unexpended balance remaining in all such funds (except such unexpended balance as may remain in any fund authorized, collected and expended by virtue of the provisions of the Constitution of this State) shall at the end of the biennium and after all warrants on same have been discharged and the appropriation thereof has lapsed, be transferred and placed to the credit of the ordinary revenue fund of the state by the state treasurer. Etc."

Section 5583, Laws of Missouri, 1931, page 144, provides:

"The supervisor of building and loan associations shall receive an annual salary of three thousand dollars (\$3,000.00). The examiners shall each receive a salary to be fixed by the supervisor of building and loan associations, but in no case to exceed the annual sum of twenty-four hundred dollars (\$2,400.00) for each of such other examiners. The stenographers shall each receive an annual salary of not to exceed one thousand five hundred dollars (\$1,500.00). All of said salaries shall be paid in equal monthly installments out of the state treasury by warrants drawn by the state auditor on the building and loan supervision fund. In addition

thereto the actual and necessary traveling and other departmental or office expenses of the supervisor of building and loan associations, the examiners, and other assistants herein provided for, shall be paid out of the state treasury upon vouchers approved and audited by the supervisor of building and loan associations, with warrants drawn on the treasurer by the state auditor on the building and loan supervision fund."

It is thus seen that the Bureau of Building and Loan Supervision collects fees which are "paid into the state treasury to the credit of a fund to be known as the building and loan supervision fund" and all expenses for operation and payment of salaries are paid "with warrants drawn on the treasurer by the state auditor on the building and loan supervision fund."

Thus, the Legislature for the biennium 1933-1934 appropriated (Section 10, Laws of Missouri, 1933, page 94) the following:

"There is hereby appropriated out of the state treasury, seventy-seven thousand five hundred ninety-five dollars (\$77,595.00), chargeable to the state building and loan supervision fund, the following amounts for the purposes expressed:

A. For Personal Service:

The salary of the supervisor of building and loan associations \$6,000
 And salaries for examiners, clerk, stenographers and janitor \$40,770

D. For Operation:

General Expense: including communication, printing and binding, travel and other general expense and Material and Supplies: consisting of stationery and office supplies \$30,825

Total \$77,595 "

We direct your attention to the provision of the Constitution of Missouri, Article X, Section 19, in part 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. "

The Legislature made an appropriation to your Department as set out above, which was approved by the Governor May 19th, 1933. However, on page 18, Laws of Missouri, 1933, Section 48-a, the following was appropriated as an emergency fund which section reads as follows:

"There is hereby appropriated out of the State Treasury, chargeable to the State Revenue Fund, the sum of Twenty-five Thousand Dollars (\$25,000.00), or so much thereof as may be necessary, for the Bureau of Building and Loan Supervision, to be used as an emergency fund by said Bureau of Building and Loan Supervision, with the approval of the Governor; said sum to be repaid into the State Revenue Fund out of the earnings of said Bureau, as, if and when received, and the State Treasurer is hereby authorized and directed to transfer to said state revenue fund fees earned and received by said Bureau of Building and Loan Supervision up to the amount hereby appropriated, or such part thereof as may be released by the Governor for use of said Bureau."

It is to be noted that the \$25,000.00 appropriated by above section is chargeable to the state revenue fund and is for the Bureau of Building and Loan Supervision to be used as an emergency fund by said Bureau of Building and Loan Supervision, with the approval of the Governor.

II.

Above we have shown that the Bureau of Building and Loan Supervision is on a fee basis and all fees are paid into the state treasury to the credit of the building and loan supervision fund,

and \$77,595.00 (Laws of Mo., 1933, page 94, Section 10) was appropriated out of such fund "the following amounts for the purposes expressed" which then provides specific amounts to be paid for personal service and for operation.

Assume that the Bureau of Building and Loan Supervision did not collect fees sufficient to enable it to have in its fund enough to pay current expenses, then such would create a condition, namely, the Legislature appropriated money and no money in the fund in which to use, so in order to provide against such an emergency, in our opinion, Section 48-a, Laws of Missouri, 1933, page 18, approved May 23rd, 1933, was enacted. In other words, Section 48-a, supra, is an emergency fund which is drawn from the state revenue fund if and when the state building and loan supervision fund does not have in it money for the payment of the purposes expressed in Section 10, supra, and such is our opinion.

It will be noted that your Department may not expend any more than is appropriated by Section 10, Laws of Missouri, 1933, and if you do not have in your fund the amount appropriated, then with the approval of the Governor an amount not to exceed \$25,000.00, as provided by Section 48-a, supra, may be drawn from the state revenue fund and deposited in the state building and loan supervision fund.

Yours very truly,

James L. HornBostel
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK
Attorney-General.

JLH:RG