

OPINION to Director of Penal Institutions holding appropriations for state penal board are not available after the two calendar years expires for which the appropriations are made.

February 9, 1933.



Hon. S. B. Hunter
Director
Penal Institutions
Jefferson City, Mo.

Dear Sir:

Acknowledging receipt of your letter of February 7, 1933, I beg to say you asked the following question:

"I want to know if under your letter of February 1st, 1933, you intended to convey the information that there is no authority for the Penal Board to pay premiums on these bonds, notwithstanding the fact that this item was carried in the appropriation bill."

You will observe in your letter which I have quoted you did not state that you referred to the appropriation bill of the last and not the present General Assembly, but I assume you refer to the appropriation made by the last General Assembly and on that assumption I beg to say that in my opinion there is no authority for the penal board at this time to pay premiums on bonds from the penitentiary funds.

You will observe by glancing at the Session Acts of Missouri 1931, that the appropriations have been made for the penal board and penitentiary only for 1931 and 1932. These years are past and appropriations made in 1931 are no longer effective.

The constitution provides Section 20, Article 4, as follows:

"The General Assembly shall meet in regular session once only in every two years; and such meeting shall be on the first Wednesday after the first day of January next after the elections of the members thereof."

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Section 19, Article 10 of the constitution provides:

"No monies 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 Supreme Court of Missouri in the case of state ex rel Missouri State Board, et al vs. Holiday, State Auditor, 84 Mo. P. 526, said:

"From a consideration of these two sections, it seems quite obvious that no appropriations of money find recognition in the constitution except "regular appropriations", and that such cannot be made except at regular legislative sessions occurring biannually. This view of the matter receives abundant confirmation in the prohibitions of Section 19 of Article X, that "no monies 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; *****"

Continuing referring to above mentioned constitutional provisions the court said:

"These provisions of the organic law are self-executive and consequently need no legislation in their aid.**** Whether, then, we consider the plain language of the fundamental law or, resorting to a very familiar rule of construction, reflect on "the old law, the mischief and the remedy," it seems plain, beyond question, that the auditor did but obey the constitutional mandate when refusing to issue his warrant. And if any doubt should still linger in the mind on this subject, that doubt will be quickly dissolved in favor of the position we have assumed by examination of the debates in the convention which framed the constitution. When speaking of Section 19, supra, Mr. Letcher observed; "in regard to the section I desire to say that if I understand the object of it, it is to keep the matter of appropriations close up together. An appropriation made at one time, made we will say today, by law, and no warrant for instance, issued for that appropriation ~~under~~ two years hence, we find that the state finances would be in such a condition that unless we put some limit upon this thing, it will be almost impossible to know how the treasury does stand."

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And commenting on the same section, Mr. Mudd said:

"How the object of the committee was to restore to the general revenue the balances of the appropriations not applied at the end of every two years, so that each session of the General Assembly should make appropriation for the term during which they were elected, and not leave those appropriations open to be drawn upon at any time, which have been made by preceding general assemblies. It was to close up the books at least once every two years, and then if any appropriation be made, let it be made by the assembly then in session."

The constitutional provisions above referred to with the opinion of the Supreme Court thereon and comments by members of the constitutional convention which framed the instrument show that the reason behind these provisions was to close up the books at least once every two years.

In the case of State ex rel vs. Gordon 236 No. 142, the Supreme Court held,"

"An act creating a game protection fund from licenses, penalties and forfeitures, and requiring all salaries of the game commissioner and his deputies and all expenses of the department to be paid out of said fund, does not constitute a continuing appropriation and the moneys in said fund or continually added thereto are not available to pay the said salaries and expenses unless appropriated biennially as required by Section 43 of Article 4 and Section 19 of Article 10 of the constitution."

The court in this case held, first, that an appropriation by the 1931 General Assembly for the state penal board could not be used to pay expenses beyond the years 1931 and 1932, although such salaries and expenses might come from earnings of the penitentiary; second, that an appropriation for a state department supported by having expenses thereof paid from fees or services rendered is not a continuing appropriation but must be made every two years.

I think I have answered your questions.

Any additional information I can give and which you desire will be promptly furnished. I think it is now unnecessary

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to discuss herein any recommendations made by the state tax commission as to payment of premiums on bonds herein mentioned, nor necessary to discuss the suggestion that Section "D" of appropriation for state prison board for years 1931 and 1932, Session Laws, No. P. 51, and the language occurring therein, "and other general expense", would authorize payment of premiums at this time by the state on bonds of members of penal board given to the state, because in my opinion nothing but an appropriation by the present General Assembly now in session will authorize payment by the state through the penitentiary fund or otherwise, of premiums on bonds executed by members of the penal board to the State of Missouri.

Very respectfully,

EDWARD C. CROW

APPROVED: _____

ROY McKITTRICK
Attorney General.

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