

Constitution Sec. 13 of Article V
of the Constitution of Missouri, adopted Nov 8
1932, is self-enforcing
February 2, 1933



Hon. Richard K. Phelps,
Hon. W. G. Tracy,
Members Sub-Committee on House Appropriations,
Jefferson City, Missouri.

Gentlemen:

The question submitted by you to this department for answer, as I understand it, is as follows:

" Is Section 13 of Article V of the Constitution of the State of Missouri, as amended, self-enforcing?"

The question is general in its nature, therefore we will discuss the several separable provisions of the section referred to.

Section 13 above referred to is as follows:

"Sec.13.(The Governor shall, not later than fifteen days after the convening of the General Assembly in each biennial session, submit a budget showing estimated available revenues of the state for the ensuing biennium and recommending a complete plan of expenditures. All recommended expenditures and appropriations shall be itemized.) If any bill presented to the Governor contain several items of appropriation of money, he may object to one or more items (or portions of items) while approving other portions of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the items,(or portions of items) to which he objects, and the appropriations, (or portions thereof), objected to shall not take effect. If the General Assembly be in session, he shall transmit to the house in which the bill originated a copy of such statement, and the items (or portions thereof) objected to shall be separately reconsidered. If it be not in session, then he shall transmit the same within thirty days to the office of the Secretary of State, with his approval or reasons of disapproval. (Provided, however, nothing herein contained shall be construed as authorizing the Governor to reduce any appropriation for free public school purposes.)"

The parts of the section above quoted and enclosed in brackets are the amendments to Section 13 of Article V of the Constitution as it existed previous to the adoption of the present section 13. The word "so" appearing in the 5th line of old Section 13 is omitted from the new section. The general rule in this state to be applied in determining whether or not a constitutional provision is self-enforcing is stated in *Sharpe et al. v. National Biscuit Company*, 179 Mo. 553-562. The Supreme Court stating:

"In *Fusz v. Spauhorst*, 67 Mo. 256, this court had before it section 27 of article 12 of the Constitution, which makes it a crime, " the nature and punishment of which shall be prescribed by law", for any officer of a banking institution to receive deposits after he knows it is insolvent, and which makes every such officer individually responsible civilly for such deposits, and it was there said 'The cases are exceptional where constitutional provisions enforce themselves; ordinarily the labors of the convention have to be supplemented by legislation before becoming operative. Of course if it be evident from the terms employed in any particular provision of the organic law, that it shall go into force forthwith, without awaiting ancillary legislation, it will become an imperative judicial duty to thus declare.' Accordingly it was held that the whole section was not self-enforcing.

Thereafter in *Cummings v. Winn*, 89 Mo. 1. c. 56, the question again came before this court and the decision in the *Spauhorst* case was referred to, and it was unanimously held that the first portion of the section that made it a crime, ' the nature and punishment of which shall be prescribed by law', was clearly not self-enforcing, but needed legislative action to prescribe the nature and punishment of the offense, but that the latter provisions of the section, which made such officer civilly liable for such deposits, was self-enforcing and needed no legislative aid. (Consult, also, *State v. Sattley*, 151 Mo. 1. c. 493.)

The general rule as to whether the provisions of the Constitution are self-enforcing is thus stated in 6 Am. and Eng. Ency. Law (2Ed.), p. 912: ' Constitutional provisions are self-executing where there is a manifest intention that they should go into immediate effect, and no ancillary legislation is necessary to the enjoyment of a right given or the enforcement of a duty imposed. * * * In case a constitutional provision is ambiguous and the words employed do not plainly evince an intention that the provision is to be self-executing, the court in construing it will resort to other aids than the mere language employed.

"Judge Cooley states the rule to be 'A constitutional provision may be said to be self-executing if it supplies a sufficient rule by means of which the right given may be enjoyed and protected, or the duty imposed may be enforced; and it is not self-executing when it merely indicates principles, without laying down rules by means of which these principles may be given the force of law.' (Cooley's Const. Lim. (7 Ed.), p. 121."

See also State ex inf. Norman v. Ellis, 28 S. W.(2nd) 363.

Along the same line and with reference to a constitutional provision imposing a duty upon an officer, which is true of the provision under consideration, the Supreme Court of New Mexico in State ex rel Delgado v. Romero, 124 Pac. 649-651, said:

"The mere fact that legislation might supplement and add to or prescribe a penalty for the violation of a self-executing provision does not render such provision ineffective in the absence of such legislation. Judge Cooley lays down the rule thus: 'A constitutional provision may be said to be self-executing if it supplies a sufficient rule by means of which the right given may be enjoyed and protected, or the duty imposed may be enforced.' Cooley's Constitutional Limitations (7th Ed.) p. 121. Tested by this rule, the clause in question is clearly self-executing. If a constitutional provision, either directly or by implication, imposes a duty upon an officer, no legislation is necessary to require the performance of such duty."

The Supreme Court of Arizona in Campbell v. Hunt, 162 Pac. 882-886, said:

"If a Constitutional provision directly imposes a duty upon an officer, no legislation is necessary to require the performance of such duty."

Going to the provisions of Section 13, the Governor shall not later than fifteen days after the convening of the General Assembly at each biennial session, submit a budget showing the estimated available revenues of the state for the following biennium, ^{re} commending a complete plan of expenditures. As to whether the time in which the budget shall be submitted is mandatory or directory only is not submitted to us by your question. The Governor is to estimate the available revenues and recommend a plan for expending the same. The expenditures and appropriations so recommended by the Governor shall be by him itemized. If the General Assembly presents an appropriation bill to the Governor containing several items, the Governor may object to one or more items, or he may

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object to a portion of any one of the items. If the Governor does object to one or more of the items or if he objects to a portion of any of the items, he shall attach to the bill so submitted to him at the time of signing the bill, a statement of the items or portions of items to which he objects, and the appropriations or portions thereof provided in the bill and objected to by the Governor shall not take effect. If the General Assembly be in session at the time the Governor attaches his objections to the bill, he shall transmit to the house where the bill originated a copy of his statement of objections to the bill and thereupon the items or portions thereof objected to by the Governor shall be separately reconsidered by the house where the bill originated. If the General Assembly shall not be in session at the time, the Governor shall transmit the bill with his approval or reasons for disapproval within thirty days to the office of the Secretary of State.

Under the rules above stated, and from the provisions of Section 13 itself, no reason appears for the Legislature being call on to enact Legislation to enable the Governor to perform the duties imposed upon him by the section, but it is only a question of what the courts might say his duties are under the terms and provisions of the section.

We are of the opinion that Section 13 of Article V of the Constitution is self-enforcing, and does not need additional legislation by the General Assembly to carry the same into effect.

Very truly yours,

GILBERT LAMB
Assistant Attorney-General

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