

Accounts in State Auditor's office with various departments must be carried according to the appropriations made in House Bill 661, and it is not permissible to group these various divisions for which appropriations are made and carry the aggregate appropriation made for each department in one item.

June 7, 1933. 6-14



Hon. Forrest Smith,
State Auditor,
Jefferson City, Missouri.

Dear Sir:

Your letter reads as follows:

"Under H.B. 661, etc. appropriating funds to the various departments, we have four major divisions as follows:

- A-Personal Service
- B-Additions
- C-Repairs and Replacements
- D-Operation

Q-Is it necessary for us to carry our accounts with the various departments according to these four major sub-divisions or would it be permissible to group them and carry the aggregate appropriation made each individual department as one item?"

This department assumes that the order in which you set out the "major divisions" as you term same, is the order in which same appears in H.B. 661, same being the general appropriation bill. Section 19, Article X of the Constitution of Missouri is 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

and expenditures of all public money shall be published from time to time."

It will be observed that this section provides "and every such law making a new appropriation **** shall distinctly specify the sum appropriated, and the object to which it is to be applied." This language is very clear and definite and can hardly be misunderstood. In order to understand the full force and effect of this section of the Missouri Constitution (Sec. 19 of Art. X), one must go back to the reason therefor and the origin thereof. The following extract from 4 Corpus Juris, p. 1460 gives a concise and accurate history of the constitutional provision Section 19 of Article X in our State Constitution, and a similar one which will be found in the constitutions of most of the states:

"The origin of legislative appropriations is so well known that it seems almost a work of supererogation to here allude to it. Legislative appropriations are the outgrowth of the long struggle in England against royal prerogative. By degrees the power of the crown to levy taxes was restrained and abolished, but it was found that, so long as the crown might at its own discretion disburse the revenue, the reservation to the people through parliament of the power to raise revenues was not a complete safeguard. Efforts to control the crown in disbursement as well as in the collection of revenues culminated with the revolution in 1688, and since then the crown may only disburse moneys in pursuance of appropriations made by act of parliament. When our governments, state and federal, came to be established, the requirement of legislative appropriations was adopted from England, along with many provisions having in view the preservation of the liberties of the people, and our own state constitution in the provisions quoted is somewhat more strict and more in accordance with the English practice than either the federal constitution or the constitution of most of the other states." State v. Moore, 50 Nebr. 88, 94, 69 N.W. 373, 61 AmSR 538. To same effect Humbert v. Dunn, 84 Cal. 57, 24 P. 111; Ristine v. State, 20 Ind. 328; State v. Eggers, 29 Nev. 469, 91 P. 819, 16 LRANS 630; State v. King, 108 Tenn. 271, 67 S.W. 812; State v. Burdick, 4 Wyo. 272, 33 P. 125, 24 LRA 266."

Two objects were sought by our English ancestors in obtaining the provisions of what is Section 19, Article X in our constitution embedded in the English law, to-wit: (1) to control the amount of taxation, and (2) to control the expenditure thereof. The amount was sought to be controlled by putting the power in the hands of parliament and taking it away from the King, and the expenditures were to be controlled by providing the specific object for which the money should be spent.

In the light of this history of the origin of these constitutional provisions found in the state constitutions of the United States, the reason for the existence thereof, and the importance of same, are outlined clearly against the background of the struggle in England between the people and the exercise of uncontrolled power in the person of the King.

Many of the courts of this country have discussed this question and the effect of these provisions similar to Section 19 upon the expenditure of funds through state governments. Our own court in many decisions has construed the provisions of Section 19, Article X, but none that we are able to find upon this precise point submitted by your letter. Among other things our court held in State ex rel v. Gordon, 236 Mo. 142 that although a tax might be legally levied and collected for a specific purpose, and thereby constituting a special fund, yet it could not be paid out except by regular appropriations.

In State ex rel v. Seibert, 99 Mo. 122, the court held in a Reappropriation Act, the object of the appropriation must be stated, and it is not sufficient to refer to the first appropriation act for that purpose.

In State ex rel Holladay, 66 Mo. 385 Sec. 19 of the Constitution is held to be self-enforcing. Our court holds with reference to this section that it forbids the payment of money from the state treasury received from any source whatever, or of any funds under its management except in pursuance of regular appropriations made by law, and so, in State ex rel Publishing Co. v. Hackmann, 314 Mo., l.c. 34 and 35, our Supreme Court held:

"The fact that the separate appropriation acts for the support of the State Highway Commission mention printing as an item to be paid for out of the moneys so appropriated is no reason why the commission should not conform to the statute authorizing and regulating printing for the executive departments. An appropriation does no more than to set apart the amount and designate the purpose for which the designated sum may be expended, and is immaterial in determining the manner in which it shall be expended, and cannot impair a general statute prescribing that it

shall be expended under the authority and regulation of another commission.

* * * * *

The money out of which the State Highway Commission is maintained is public or state revenue. Whether it be called motor-vehicle-registration fees, or license fees, or a tax, or by any other name, it is a tax levied by the State upon the right of motor vehicles to use the public highways, is collected by the State, and paid directly into the State Treasury, and all of it that can be used for maintaining the commission is subject to legislative appropriation, just as is other state revenue.

* * * * *

The State Auditor is expressly prohibited by plain statute from paying a bill created by the State Highway Commission for printing done by a company which does not hold a contract with the State for doing the printing for the executive departments; and with whatever company a contract for doing the State printing may be made, the State Auditor cannot pay its bill until the Legislature first appropriates money with which to pay it.

Nothing in Chapter 89, Revised Statutes, 1919, as amended in 1921, regulating public printing, attempts to prescribe the particular fund out of which claims for printing and stationery may be paid, but it simply prescribes that such claims shall be paid out of any moneys in the Treasury appropriated for that purpose; and in that respect the chapter is constitutional, and it therefore contemplates that the Legislature will biennially make appropriations to pay such claims, and is not restricted to making appropriations out of the general revenue fund for the payment of claims for public printing and stationery, but may require the cost of printing for the State Highway Commission to be paid out of the money appropriated for its maintenance."

We see here the Supreme Court says that the appropriation sets apart the amount of money and designates the purpose for which the designated sum may be spent. Having taken this review of the history of Section 19, and examining some of the many decisions of our Court upon said section, we are naturally led up to the inquiry: what constitutes an appropriation within the provision of Section 19 prohibiting payment without one?

An excellent definition of the meaning of the word "appropriation" as the word is used in constitutional provisions such as Section 19, is found in Ristine, Auditor, v. the State of Indiana, 20 Ind. 338, as follows:

"Appropriation, as applicable to the general fund in the treasury, may, perhaps be defined to be an authority from the Legislature given at the proper time, and in legal form, to the proper officers to apply sums of money out of that which may be in the treasury, in a given year, to specified objects or demands against the State."

We see in this definition stress is laid on the specification of the object for demands against the state and that to be an appropriation the Legislature must specify the objects for which the money is to be spent. The following different definitions that have been given by various courts will be found in 4 Corpus Juris, page 1460 under the title of "appropriation of funds", as follows:

"An appropriation of funds is an authority from the legislature, given at the proper time and in legal form to the proper officers, to apply sums of money, out of that which may be in the treasury in a given year, to specified objects or demands against the state; the act of the legislature in setting apart of assigning to a particular use a certain sum of money to be used in the payment of debts or dues from the state to its creditors; a setting apart from the public revenue of a certain sum of money for a specified object, in such manner that the executive officers of the government are authorized to use that money and no more for that object, and for no other; the setting apart of a portion of the public funds for a public purpose; the setting apart of public moneys by legislative vote or enactment to be applied to specific objects of public expenditures; the legislative authorization prescribed by the constitution that money may be paid out at the treasury; the setting aside by congress of a designated amount of public money for a designated purpose."

And on the same page in the same book (4 C.J. 1460), a definition of "Appropriation Bills" is given as follows:

"Annual statutes by which the legislative branch of the government regulates the manner in which the public money voted at each session is to be applied to the various objects of expenditure."

The definitions given, it will be noticed, all declare that the money authorized, and so much as is authorized, and no more, can be

expended for the object named in the appropriation bill, and for no other.

One of the leading cases in more recent times upon this construction of the constitutional provision similar to Section 19 is that of State v. Moore, 50 Nebr. p. 88. The facts were that an Act of the Nebraska Legislature provided bounties for sugar manufactured in the state from beets, sorghum or other sugar yielding cane or plants grown in Nebraska at the rate of \$.005/8 per pound, and another provision was that persons establishing after the passage of the Act additional factories should receive an additional bounty of \$.003/8 per pound. Section 8 of the Act provided that when any claim arising under this Act was filed, verified and approved by the Secretary of State as herein provided, he should certify the same to the Auditor of the State who should draw a warrant upon the treasury for the amount due thereon payable to the party or parties to whom said sum or sums are due. The Auditor of the state refused to issue a warrant for \$805.00 first, because there was no lawful appropriation out of which such bounty could be paid; and second, that if there were such an appropriation, it would be in excess of the power of the legislature to make such expenditures, as the power to appropriate had been already exhausted. It was conceded the legislature had made no general appropriation act relative to this subject outside of the sections hereinabove cited, but the claim was made by claimant, sugar beet grower, that in the provision quoted above from the Nebraska Legislature's enactment there existed an appropriation wherewith to pay the bounties created. Section 19, Article III of the Nebraska Constitution provided as follows:

"That each legislature shall make an appropriation for the expenses of the government until the expiration of the first fiscal quarter after the adjournment of the next regular session, and all appropriation shall end with such fiscal quarter."

By Section 3 of Article III it is provided that legislative sessions shall be biennial. By Section 22 of Article "" it is provided that

"No money shall be drawn from the treasury except in pursuance of a specific appropriation made by law and on the presentation of a warrant issued by the Auditor thereon, and no money shall be diverted from any appropriation made for any purpose or taken from any fund whatever, either by joint or separate resolution."

This question was presented under this state of facts as to whether or not the act of the legislature of Nebraska was an appropriation

within the meaning of the constitutional provision. It will be observed that the Nebraska Constitution REQUIRED A SPECIFIC APPROPRIATION JUST AS OUR MISSOURI CONSTITUTION REQUIRES A SPECIFIC APPROPRIATION. The Nebraska Court held that the act of the Nebraska Legislature above quoted from constituted no appropriation, and said:

"Having in view the origin and history of appropriations, as well as the general lexicographic meaning of the words 'to appropriate', is to set apart from the public revenue a certain sum of money for a specified object in such a manner that the executive officers of the government are authorized to use that money, and no more, for that object and for no other."

And in the case of Black and White Taxi Company v. Standard Oil Company, 218 Pac., l.c. 148, the Supreme Court of Arizona said that an appropriation is

"The setting aside from the public revenue of a certain sum of money for a specified object in such manner that the executive officers of the government are authorized to use that money and no more for that object".

And the following cases are cited to sustain that definition of an appropriation:

State v. Moore, 50 Nebr. 88, 69 N.W. 373;
Clayton v. Berry, 27 Ark. 129;
Stratton v. Green, 45 Cal. 149;
State v. LaGrave, 23 Nev. 25, 41 Pac. 1075;
Proll v. Dunn, 80 Cal. 220, 22 Pac. 143;
State v. Kinney, 9 Mont. 389, 24 Pac. 96;
State v. Lindsley, 3 Wash. 25, 27 Pac. 1019;
State v. King, 108 Tenn. 271, 67 S.W. 812;
Ristine v. State, 20 Ind. 328;
Campbell v. State, etc., 115 Ind. 591, 18 N.E. 33;
Shattuck v. Kincaid, 31 Or. 379, 49 Pac. 758;
Henderson v. Board of Commissioners of State
Soldiers and Sailors Monument, 129 Ind. 92,
38 N.E. 127.

We see, therefore, that an appropriation to be valid must be (1) for a specified definite amount and must be paid within the time limited within the Constitution (which in Missouri is two years); and second, it must be for a specified object which must be named in the appropriation. After these two conditions have been met, the third legal condition is that the money so appropriated can be used for no other purpose except that named in the appropriation act.

In line with this constitutional provision and the decisions of the courts are the statutory provisions of Missouri with reference to the State Auditor and Treasurer. Section 11421 R.S. of Mo. 1929 provides:

"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, ever exceed the amount appropriated by law for that purpose."

Reading this section in the light of the decisions above referred to, this section means that unless an appropriation bill has been passed specifying the object for which, and the amount thereof, the money may be used, the Auditor is prohibited from drawing a warrant on the Treasurer, and likewise, unless the amount is specifically named in the law making the appropriation and the object thereof is specifically named therein, the Treasurer is prohibited from paying same; and the third legal condition is that the Auditor cannot draw a warrant, nor the Treasurer pay one, for any other object than that named specifically in the appropriation bill.

Section 11425 R.S. of Mo. 1929, with reference to the duties of the State Treasurer, provides:

"The State Treasurer shall receive and keep as provided by law all the moneys of the state ****; disburse the public moneys upon warrants drawn on the treasury according to law, and within the time limited in the Constitution, and not otherwise. ****"

Section 11429 provides:

"Whenever a warrant shall be presented to the treasurer it shall be his duty to pay the same in lawful money, or by giving a check on some depository of state funds, attesting the same by affixing his seal of office to said check; provided, said warrant is properly drawn against a legal appropriation, and does not exceed the amount thereof; and no money shall be drawn from a depository of state funds in any other manner."

Section 11404, relative to duties of State Auditor, among other things, provides:

****Third, express in the body of every warrant which he may draw upon the treasury the particular fund, appropriated by law, out of which the same is to be paid. ****"

We see in these sections the same principle of law carried out that the courts enforce in construing constitutional provisions with reference to appropriations, to-wit: that the appropriated sum must be for a definite amount---that the appropriation bill must specify the specific object for which it is appropriated--and that the Auditor is not authorized to draw, nor the Treasurer to pay, any warrant unless same is to be paid for the object and purpose specified in the appropriation act. The same reason actuated the Legislature in enacting these legislative provisions that actuated the framers of the Constitution of Missouri placing Section 19, Article X in the Constitution of Missouri, and that is to control the amount of the expenditures and the purpose for which the expenditures are made.

Applying these principles enunciated by the Court to Section 19, Article X of the Constitution and to H.B. 661, it is the opinion of this department that the accounts in the Auditor's office should be so kept that same will disclose accurately that the money appropriated for different purposes was used only for those specific purposes and paid to the department or departments provided for in the appropriation act, and that the accounts in the Auditor's office should show affirmatively that none of the money appropriated was paid out for any other object than that specified in the appropriation bill, and if paid out was paid for the specific object named in the act making the appropriation.

It is the opinion of this department that it would not be permissible for you to group the various items of appropriation and carry the aggregate appropriation made to each individual department as one item.

Respectfully yours,

EDWARD C. CROW

APPROVED:

ROY McKITTRICK,
Attorney General

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