

APPROPRIATION: Sec. 2-a of House Bill 645 is unconstitutional.  
BLIND PENSION FUND: Surplus of fund after payment to pensioners and providing for adequate support of Commission must be transferred, if at all, to Public School Fund created under and by virtue of Sec. 6 of Art. XI

June 10, 1933.

Hon. Forrest Smith  
State Auditor  
Jefferson City, Missouri

Dear Sir:

We are in receipt of your request for an opinion dated May 24, 1933, which is as follows:

"H. B. No. 645, passed by the last Session of the Legislature, set aside one-third of the State Revenue into the Public School Moneys Fund, and also transferred and appropriated from the Blind Pension Fund to the support of the Free Public Schools.

The portion of this Bill in which I am particularly interested is Sec. 2A, transferring \$700,000 from the Blind Pension Fund to the Public School Fund.

Q - "Can this Transfer be legally made?"

It is the opinion of this department that the \$700,000 referred to in House Bill numbered 645 cannot be legally transferred from the Blind Pension Fund to any fund other than the Public School Fund created under and by virtue of Sec. 6 of Art. XI of the Constitution of Missouri. It is also the opinion of this department that House Bill 645 is not sufficient to transfer said \$700,000 from the Blind Pension Fund to the Public School Fund referred to above.

The opinions expressed above are predicated upon the following reasons:

Sec. 47 of Art. IV of the Constitution of Missouri provides for the Blind Pension Fund in the following language:

"That the General Assembly of the State of Missouri shall cause an annual tax of not less than one-half of one cent nor more than three cents on the one hundred dollars valuation of the taxable property of the State to be levied for the purpose of providing a fund

to be devoted in the manner provided by law to the pensioning of the deserving blind. If any balance shall exist in such fund after the deserving blind have been pensioned, then the same, or so much thereof as may be necessary, may be used for the support of the commission for the blind. And if there shall be a balance in said fund after the blind have been pensioned and the commission for the blind has received adequate support, then the same shall be transferred to the PUBLIC SCHOOL FUND. Said tax shall be levied and collected annually in the same manner as other State taxes are levied and collected, and such fund shall be subject to appropriation for above purposes by the General Assembly."

Under the above section of the Constitution it appears that if there occurs a balance in the Blind Pension Fund after the deserving blind have been pensioned and the Commission for the Blind has received adequate support, then such balance, if any, must be transferred to the "Public School Fund."

The question then presented is: What is meant by "Public School Fund" as used in the above quoted part of Sec. 47, Art. IV of the Constitution?

It is an elementary rule of construction that all writings, whether they be laws, deeds, wills, contracts or constitutions, must be construed as a whole and not in detached fragments or isolated sections. (Sec: State v. Adkins, 225 S. W. 981, 284 Mo. 680; State ex rel City of Carthage v. Hackmann, 229 S. W. 1078, 287 Mo. 184)

Under the above rule of construction we find on examination of the entire Constitution that the only reference made elsewhere to a "Public School Fund" is to be found in Sec. 6 of Art. XI of the Constitution; hence, we construe the fund referred to in Sec. 47 of Art. IV as the "Public School Fund" to be the fund created under and by virtue of Sec. 6 of Art. XI which, as we will hereinafter disclose, is a permanent school fund from which only the income therefrom can be expended.

Possibly it could be argued that the above reasoning does not apply in view of the fact that that part of Sec. 47 of Art. IV which provides for the Blind Pension Fund was not adopted until November 2, 1920, whereas, Sec. 6 of Art. XI was adopted in 1875; but in our opinion this argument is unavailing for the reason that at that time (and even now) no other school fund provided for either by statute or by constitution bore the name "Public School Fund" except Sec. 6 of Art. XI heretofore considered. (For an

excellent history of school funds in this state, we refer you to an opinion rendered by the former Assistant Attorney General, Walter E. Sloat, dated January 2, 1933, which we understand is in your files at the present time; but note, however, that said opinion is upon a different inquiry from that here made and involves different principles.)

Since the "Public School Fund" mentioned in Sec. 47 of Art. IV of the Constitution (Blind Pension Section) is the same fund as created in Sec. 6 of Art. XI, then the surplus moneys, if any, contained in the Blind Pension Fund must be transferred, if at all, to the school fund referred to in said Sec. 6 of Art. XI, and no other.

Is House Bill 645 legally sufficient to transfer the \$700,000 therein mentioned to the "Public School Fund" created under and by virtue of Sec. 6 of Art. XI? Sec. 2-a of House Bill 645 is as follows:

"There is hereby set aside to the credit of the public school fund and appropriated to the support of the free public schools of the state for the period beginning March 1, 1933, and ending March 1, 1934, the sum of Seven Hundred Thousand Dollars (\$700,000.00) of the balance remaining in the state treasury to the credit of the fund for pensioning the deserving blind, as such fund has been accumulated under the provisions of Section 47, Article IV, of the Constitution of this State, and Article 1, Chapter 51, of the Revised Statutes of Missouri, 1929, which amount of Seven Hundred Thousand Dollars (\$700,000.00) is in excess of the requirements of said section 47, Article IV, of the Constitution and Article 1, Chapter 51, Revised Statutes of 1929, to pension the deserving blind and to give adequate support to the Commission for the Blind, and is available under the terms of said section 47, Article IV of the Constitution for purposes herein set forth. Said funds hereby appropriated shall be apportioned and distributed for the support of the free public schools for the period herein specified by law."

It is apparent from the above section that the Legislature intended to transfer said amount of money from the "Blind Pension Fund" to the "Public School Fund" so that the whole of said fund could be apportioned to the various schools of the state between March 1, 1933 and March 1, 1934.

It is the opinion of this department that the Legislature had no right to provide that moneys properly belonging to the "Public School Fund" could be used in the above manner. Sec. 6 of Art. XI providing for the "Public School Fund" is as follows:

"The proceeds of all lands that have been or hereafter may be granted by the United States to this State, and not otherwise appropriated by this State or the United States; also, all moneys, stocks, bonds, lands and other property now belonging to any State fund for purposes of education; also, the net proceeds of all sales of lands and other property and effects that may accrue to the State by escheat, from unclaimed dividends and distributive shares of the estates of deceased persons; also, any proceeds of the sales of the public lands which may have been or hereafter may be paid over to this State (if Congress will consent to such appropriation); also, all other grants, gifts or devises that have been, or hereafter may be, made to this State, and not otherwise appropriated by the State or the terms of the grant, gift or devise, shall be paid into the State treasury, and securely invested and sacredly preserved as a PUBLIC SCHOOL FUND; the annual income of which fund, together with so much of the ordinary revenue of the State as may be by law set apart for that purpose, shall be faithfully appropriated for establishing and maintaining the free public schools and the State University in this article provided for, AND FOR NO OTHER USES OR PURPOSES WHATSOEVER."

Under the above section of the Constitution and the cases sonstruing similar sections of the Constitution (Railroad v. Gildersleeve, 165 Mo. A., l. c. 379), it was the intention of the framers of the Constitution to provide a permanent fund-- a fund, the corpus of which was to remain intact and not to be dissipated, ie., only the income therefrom was to be expended. Therefore, that part of House Bill 645 providing for the apportionment of the \$700,000 between March 1, 1933, and March 1, 1934 is contrary to the Constitution; and under such circumstances the Constitution, of course, prevails. (See: State ex rel Bradshaw v. Hackmann, 276 Mo. 600.

Notwithstanding the fact that the Legislature in said House Bill has used the words "Public School Fund", it is the opinion of this department that said House Bill is ineffectual to transfer the said sum of \$700,000 to the "Public School Fund" mentioned in Sec. 6 of Art. XI of the Constitution, and is ineffectual for any purpose.

In 59 Corpus Juris, p. 639, it is said:

"The effect of judicial decisions declaring particular statutes unconstitutional and void has been discussed elsewhere in this work. A statute may, however, be in part constitutional and in part unconstitutional, and if the parts are wholly independent of each other, that which is constitutional may stand while that which is unconstitutional will be rejected, and this rule applies, even though the constitutional and unconstitutional parts are in the same section of the act; but if the parts are inseparably connected with each other the entire statute will be held void."

A test for determining whether or not a statute is severable within the meaning of the above rule of law is given in the same volume of Corpus Juris on p. 642, as follows:

"Whether the valid or invalid parts of a statute are independent and separable, or inter-dependent, is a question of construction and of legislative intent, and in determining the question the rule is that if, when the invalid part is stricken out, that which remains is complete in itself and capable of being executed in accordance with the apparent legislative intent, wholly independent of that which was rejected, it must be sustained to that extent; \*\*\*\*\* In other words, the whole act will be declared invalid where the unconstitutional part is so connected with the remainder or with the general scheme, that it cannot be stricken out without making the legislative intent ineffective, or is of such import that, without it the other parts would cause results not contemplated or desired by the legislature, or is the consideration and inducement of the whole act. \*\*\*\*\*"

The above principles enunciated in Corpus Juris have been adopted in this state.

State v. Gordon, 188 S. W. 160, 268 Mo. 713;  
State v. Lollis, 33 S. W. (2d) 98.

Applying the foregoing principles to the section of the statute here under consideration, it is the opinion of this department that said part of the statute providing for the unconstitutional

restraints upon the use of the fund involved is so much a part of the expressed intention of the Legislature and so inter-mingled with that part of the section providing for the transfer of the money from the "Blind Pension Fund" to the "Public School Fund" as to render the entire section unconstitutional. In other words, it is our opinion that the Legislature did not intend to transfer the \$700,000 into the "Public School Fund" as that term is used in Sec. 6 of Art. XI of the Constitution due to the restraining provision heretofore considered, and hence, the entire section under the decisions heretofore cited is unconstitutional, void, and of no effect.

In rendering the above opinion, we are not unmindful of the great need for funds on behalf of our public schools, but we find ourselves bound by the principle correctly expressed in State ex rel Elsas v. Missouri Workmen's Compensation Commission, 2 S. W. (2d) 796, 318 Mo. 1004, as follows:

"Nor can we change the Constitution by mere force of our opinion, just because some hardships may be occasioned by following the Constitution."

Respectfully submitted,

POWELL B. McHANEY,  
Assistant Attorney General.

APPROVED:

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Roy McKittrick,  
Attorney General

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