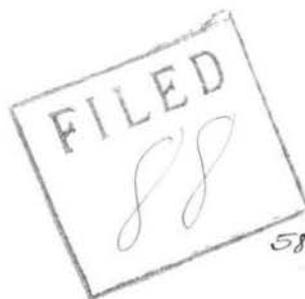


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Missouri
HIGHWAYS: Authorization of state officials to take necessary steps to secure federal aid.

11-B
November 10, 1933.



Honorable Louis V. Stigall, Chief Counsel,
Missouri State Highway Department,
Jefferson City, Missouri.

Dear Sir:

A request under date of October 31, 1933 has been received from you for an opinion, which request is in the following terms:

"As you are aware, at the present time the State Highway Commission of Missouri is bending every effort to let as many contracts for road construction in the various counties of the State in order to relieve unemployment and secure Missouri's share of Federal funds under the National Industrial Recovery Act. Under the provisions of Section 204 of this Act regulations have been made by the Bureau of Public Roads concerning the advancement of funds by the Federal Government to the various states where the states do not have funds which are readily available for the purpose of expediting the work.

It is the desire of the State Highway Commission of Missouri that an application for an advancement of \$2,500,000 of Federal funds be made at this time in order that the work under this program may proceed more rapidly. I would, therefore, like to respectfully request your opinion concerning the authority of the State Treasurer and the State Auditor to cooperate with the State Highway Commission in securing this advancement; and also to comply with the rules and regulations of the Federal Government under which this advancement is authorized.

In order that you may have the full information concerning the subject, I am attaching hereto sample forms of the request for advance of funds issued by the United States Department of Agriculture, Bureau of Public Roads, the certificate to be executed by the State Treasurer covering the funds advanced, and a memorandum of procedure and accounting requirements for advances of National Industrial Recovery highway funds, all issued by the Federal Government and which are necessary to procure an advancement of funds.

In this connection I believe Section 8106, R. S. Mo. 1929 will aid you in your investigation as to the validity of this procedure. May I also say that under the procedure outlined by the Federal Government some additional accounting will be made necessary, and the Commission will be glad to cooperate fully with the Auditor and Treasurer in working out the details of this work.

I would appreciate your early consideration of this matter."

The Federal Highway Act was enacted by Congress in 1921 (23 U. S. C. A. Sections 1-25) and it provided a scheme for federal aid to states for road building. At the first extra session of the Missouri General Assembly in 1921 certain statutes were enacted setting up machinery and granting powers to appropriate officials to make funds from the United States under the Federal Highway Act available to the State of Missouri (such statutes being now Revised Statutes of Missouri, 1929, Sections 8093-8121; Laws 1921, First Extra Session, page 131). Before 1921 the General Assembly had already indicated its policy to make it possible for Missouri to receive federal aid for road building by the enactment of what is now Revised Statutes of Missouri 1929, Section 8092, which provides as follows:

"Sec. 8092. Assent to act of congress for aid to state roads.- That assent is hereby given to an act of the congress of the United States, entitled: 'An act to provide that the United States shall aid the states in the construction of rural post roads and for other purposes.'"

Of the 1921 statutes Section 8106 leaves little doubt of the intent of the Legislature to authorize Missouri state officials to do whatever is necessary to secure aid under the Federal Highway Act, section 8106 providing in part as follows:

"The commission is hereby directed to comply with the provisions of any act of congress providing for the distribution and expenditure of funds of the United States appropriated by congress for highway construction, and to comply with any of the rules or conditions made by the bureau of public roads of the department of agriculture, or other branch of the United States government, acting under the provisions of federal law in order to secure to the state of Missouri funds allotted to this state by the United States government for highway construction. The commission is authorized to pay the state's proportion of the cost of roads constructed with federal and state funds out of the state road fund. Any money due to the state of Missouri from the United States, under the provisions of such acts of congress, relating to highway construction, shall be received by the state treasury and deposited in a separate fund, and paid out by the state treasurer on requisitions drawn by an officer of the state highway commission on a warrant of the state auditor. Said funds being the funds of the federal government allotted to the state of Missouri no appropriation of the general assembly for the expenditure of such funds shall be necessary."

The case of Logan v. Matthews, 52 S. W. 2d, 989 (1932), decided by the Supreme Court en banc shows the attitude of this court toward Section 8106. That case was a suit by citizens and taxpayers to enjoin the State Highway Commission from locating and constructing Highway No. 65 so as to miss certain towns when Revised Statutes Missouri 1929 Section 8120 provided that this highway should pass through such towns. The issue in the case was whether

or not Section 8106 above quoted should prevail against Section 8120, when the federal aid was conditioned upon the highway following the route adopted by the State Highway Commission, and when the State Highway Commission had resolved to comply with such condition even although such compliance violated Section 8120. The court held that the suit could not be maintained, a part of the opinion being as follows:

"Section 8120 provides that the road in question shall run through the towns of Avalon and Tina. The federal government refused to allow federal aid on the road unless the routing thereof was changed so as to run on a direct north and south line between the towns of Chillicothe and Carrollton, which change would locate the road two miles west of the towns of Avalon and Tina. Section 8106, supra, directs the commission to comply with any act of congress and with any rules or conditions made by the Bureau of Public Roads of the Department of Agriculture or other branch of the United States government in order to secure to the state of Missouri funds allotted to this state by the United States government for highway construction. It appears clear from the provisions of this statute that the purpose of the Legislature was to secure all of the funds allotted to the state by the federal government for road construction, and in order to accomplish that result it directed the state highway commission to comply with any of the rules or conditions made by the federal government." * * * * *

"If the Secretary of Agriculture is authorized by the Federal Highway Act to require a change in the location of the road as a condition to granting federal aid, of which there is no doubt, and the state highway commission would refuse to comply with the requirements made, and thus lose federal aid on the road, then the intention of the Legislature would be defeated, because by section 8106 it specifically directs the highway commission to comply with any condition made by the federal government in order to secure federal aid. A reasonable construction of the Federal Highway Act justifies our conclusion." 52 S. W. 2d, 992.

Section 8106 shows the intention of the General Assembly as to its eagerness to secure for Missouri federal aid for its roads, and Logan v. Matthews, supra, shows a similar attitude on the part of the Supreme Court because that case goes so far as to authorize the Highway Commission even to violate another state statute to comply with the federal conditions imposed. Under these authorities there can be no doubt that the State Highway Commission itself could comply with any federal regulations or requirements laid down under the Federal Highway Act, and the liberal attitude of the General Assembly and the Supreme Court would seem to indicate a liberality in construing the powers of state officials in securing such federal aid under the Federal Highway Act.

The Federal Industry Control Act commonly known as the National Industry Recovery Act (H. R. 5755, 73rd Congress, approved June 16, 1933) in Section 204 thereof provides an enlarged and supplemental scheme for federal aid to states

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for road building. The importance of the above analysis of the legislation in effect prior to the Federal Industry Control Act lies in the fact that such act seems to be supplemental to and to follow the general scheme of the Federal Highway Act. Section 204 of the National Industry Control Act begins as follows:

"Sec. 204. (a) For the purpose of providing for emergency construction of public highways and related projects, the President is authorized to make grants to the highway departments of the several States in an amount not less than \$400,000,000, to be expended by such departments in accordance with the provisions of the Federal Highway Act, approved November 9, 1921, as amended and supplemented, except as provided in this title, as follows:"

The whole of Section 204 under analysis shows that it does not purport to place any heavier exactions or obligations upon states seeking federal aid for road building but, on the contrary, manifests a clear intent to relax the requirements upon states of the Federal Highway Act and to make it easier rather than more difficult for a state to secure federal aid, so that if the appropriate officials of Missouri were authorized to take the necessary steps to secure federal aid under the Federal Highway Act then a fortiori they should be able to take the less onerous steps to receive the same type of aid under the National Industry Control Act.

As has been pointed out above, there seems no doubt that the State Highway Commission could do whatever is necessary to comply with federal requirements. As to the other state officials, particularly the treasurer and auditor as referred to in your request, we have found no authority prohibiting the execution and performance by them of the necessary documents and steps required by the federal authorities, and it is our opinion that the various statutes governing their powers would, in the light of the favorable attitude of the Supreme Court toward expediting federal aid for roads, probably be construed as authorizing them to the necessary compliance. It is not the policy of this state to evade proffered gifts as can be observed from R. S. Missouri 1929, Section 643, which provides as follows:

"Sec. 643. Commission created to accept devises, bequests, donations, gifts, etc., made to the state. - - Whenever any devise, bequest, donation, gift or assignment of money, bonds or choses in action, or of any property, real, personal or mixed, shall be made or offered to be made to this state, the governor, attorney-general and state treasurer, constituting a commission for that purpose, shall be and are hereby authorized to receive and accept the same on such terms, conditions and limitations as may be agreed upon between the grantor, donor, or assignor of said property and said officials constituting said commission, so that the right and title to shall pass to and vest in this state; and all such property so vested in this state and the proceeds thereof when collected, may be appropriated

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for educational purposes, or for such other purposes as the legislature may direct."

As to the action which will be necessary on the part of the state auditor, Revised Statutes of Missouri 1929, Section 11404, might provide of itself the proper authorization where it provides, in specifying the duties of the state auditor, that "he shall * * * keep an account of all debts and credits between the state and the United States, or any officer or person with whom the state may have dealings, and of every separate fund in the treasury authorized by law;". The state treasurer could certainly receive the grant (Section 11425) and he could and probably would be required to put it in a special fund (Section 11471; Laws of Missouri 1933, page 415) and require security from the depository (Chapter 72, Article II (Sections 11465-11477,)) and he could pay out the interest thereon as required by law (Section 11465). As to the matter of interest it being legal and proper for the state to accept gifts on such conditions as the donors might impose under Revised Statutes Section 643 above quoted, unless, of course, some positive provision of law should be violated by such conditions, then no reason is perceived why the state treasurer and auditor should not comply with such conditions one of which might be that the interest on such fund be paid to the United States. If the state under Section 643 can accept gifts on certain conditions then this section should of itself by implication authorize such state officials as would be required under such conditions to comply with them on behalf of the state to take the necessary and incidental steps required on the part of the state to keep its side of the bargain.

For the above reasons it is our opinion that no legal objection exists to prevent the State Highway Commission, the state treasurer and the state auditor from executing such documents and performing such acts as are now necessary under the Federal Highway Act and Section 2-4 of the National Industry Control Act to enable the State of Missouri to apply for and receive federal aid for road building under such enactments.

Yours very truly,

EDWARD H. MILLER

APPROVED:

ASSISTANT ATTORNEY GENERAL.

ATTORNEY GENERAL.