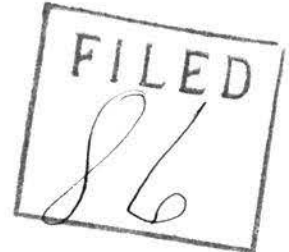


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BLIND PENSION:

Section 12-U House Bill 127 which seeks to divert from the Blind Pension Fund money for the prevention of blindness in the hands of the Missouri Commission for the blind, is unconstitutional.

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February 7, 1934

Honorable Forrest Smith  
State Auditor of Missouri  
Jefferson City, Missouri



Dear Sir:

We are acknowledging receipt of your letter in which you inquire as follows:

"I have been requested by Hon. H. O. Maxey, Representative of Bates County to secure from you an opinion as to the constitutionality of Section 12-U H. B. 127 appropriating \$50,000 from the blind Pension Fund to the Board of Managers of State Eleemosynary Institutions."

Section 12-U House Bill 127 provides as follows:

"There is hereby appropriated out of the State Treasury chargeable to the Blind Pension Fund the sum of \$50,000 for the use of the Board of Managers of State Eleemosynary Institutions for work among the inhabitants of Missouri, looking to the prevention of blindness."

We call your attention to the fact that the above appropriation is chargeable to "Blind Pension Fund." The Blind Pension Fund was created under Section 47 of Article IV of the Constitution of Missouri, which among other things provides:

"Provided further, that nothing in this constitution contained shall be construed as prohibiting the General Assembly from granting or authorizing the granting of pensions to the deserving blind, as may be provided and regulated by law: Provided further, 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 any 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 have 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."

The foregoing constitutional provision levies a tax for the purpose of providing a fund to be devoted "to the pensioning of the deserving blind." The provision further provides that any balance existing after the deserving blind have been pensioned, shall, or so much thereof as is necessary, may be used "for the support of the Commission for the Blind." If there is a further balance left after the Commission has received adequate support then such funds shall be transferred to the Public School Fund. The last sentence of the constitutional provision expressly directs that the Legislature may make appropriation out of said fund for the above purposes.

The Act itself provides how the fund shall be created and how the proceeds of the fund shall be disbursed. We find no authorization within said section which expressly or by implication would authorize the Legislature to make an appropriation out of this Blind Pension Fund for the purpose of preventing blindness.

In State ex rel. v. Pemiscot Land and Cooperage Co. 295 S. W. 78, the Supreme Court held that a constitutional provision authorizing a special tax is a limitation on the power of the Legislature, the court saying at page 80:

"It will be noted that this section of the Constitution, in plain and simple language, provides in addition to taxes authorized to be levied for county purposes (under section 11 of Article X of the Constitution), the county courts may levy and collect as state and county taxes are collected, a special tax of not more than twenty-five cents on each one hundred dollars valuation, to be used for roads and bridges but for no other purpose whatever; and the power thus conferred on the county courts is declared to be discretionary. This is an express grant of power to the county courts and is a limitation on the power of the Legislature \* \* \* \* \*"

In McGrew v. Railroad 230 Mo. 1. c. 27, the Supreme Court in quoting from Williams v. Mayor of Detroit 2 Mich. 560, says:

"That the imposition by the constitution upon the Legislature, of certain specific duties, limitations, restraints and regulations in certain important particulars, binds the Legislature of course in those particulars."

It will be observed therefore that not only is the Legislature bound by the express provisions of Section 47 of Article IV of the Constitution, which only authorizes the use of the Blind Pension Fund for the three purposes above mentioned,

but the court's holding, as above pointed out, that where the constitution levies a tax for a particular purpose or contains a particular mandate, that the Legislature is bound in those particulars and such provisions are limitations upon the authority of the Legislature to deal with the funds in any other manner.

The fund created under Section 47 of Article IV of the Constitution is for the "pensioning of the deserving blind". In *State ex rel. v. Kimbell* 256 Mo. 611, 631, the Supreme Court defines a pension as,

"A stated allowance out of the public treasury granted by Government to an individual or to his representatives for his valuable services to the country, or in compensation for loss or damage sustained by him in public service."

In Webster it is defined:

"A regular stipend paid by a government to retired public officers, disabled soldiers, the families of soldiers killed in service, etc.; a payment regularly made to any person; as; To one by way of subsidy or allowance, whether as a means of securing good will, cooperation, or the like, or as a gratuity."

The term 'pension' therefore, as used in the constitutional amendment means a stated allowance or payment made by the Government to a person, and while pensions may be ordinarily understood to be rewards for past services, yet at the same time a regular payment made by a Government either as a gratuity or for the support of a blind person, will be deemed a pension. The Act provides for the payment of pensions to the deserving blind. In *Shelley v. Missouri Commission for the Blind* 309 Mo. 612, 620, the Supreme Court held that the Legislature had the right to define who were the deserving blind, the court saying:

"The Constitution, Article IV, Section 47, authorizing the General Assembly to 'grant pensions to deserving blind, as may be provided and regulated by law'.

Under that provision of the Constitution, the Legislature no doubt had a right to define 'deserving blind' to determine who and by what tests one should come within the provisions of any law it might enact to pension blind persons."

The Legislature in Section 8894 Revised Statutes 1929, defines who are 'deserving blind' as follows:

"No person shall be entitled to a pension under this article who has vision with or without proper adjusted glasses greater than what is known as light perception; that light perception as used in this section means not more vision than is sufficient only to distinguish light from darkness and recognize the motion (not the form) of the hand of the examiner at a distance not greater than one foot from the eye; and no person shall be entitled to receive a pension except upon scientific vision test supported by the certificate of a competent oculist, approved by the commission, that such person does not possess a greater vision than that provided above in this section; and every person passing the vision test and having the other qualifications provided in this article, shall be entitled to receive a pension of three hundred (\$400.00) dollars per annum, payable quarterly."

Under the above section the Legislature has declared "that no person is a deserving blind person who has vision with or without adjusted glasses greater than what is known as light perception." Any person therefore who has greater sight



than as defined in that section is not a deserving blind person under the provisions of Section 47 of Article IV, or of Section 8894.

Under the express terms of the above constitutional provision funds derived from the tax levied by the constitution are not to be used for other than for pensions for deserving blind people. Persons therefore whose degree of sight is greater than that defined in Section 8894, can not come within the benefit of the pension fund. If the proceeds of the Blind Pension Fund could be diverted and used for the prevention and treatment of blindness, in persons who have greater sight than is defined under Section 8894, then such funds would be used for persons who were not 'deserving blind' under the above constitutional and statutory provisions.

The above appropriation bill is clearly in conflict with Section 47 of Article IV above, because it seeks to divert from the Blind Pension Fund certain money and use it for a purpose not authorized by the constitution. The fund created by the above constitutional provision must; first, be devoted to the pensioning of the deserving blind, secondly, after the deserving blind have been pensioned then the fund or a portion thereof, may be used for the support of the Commission for the Blind, and third, after the Commission has been adequately supported then the balance of the fund shall go to the Public School Fund. The taxes levied under said provision must go for those purposes and in the order named, and for no other. The constitution does not levy a tax for the prevention of blindness among the people of this state, nor can anyone who is approaching blindness come within the classification of deserving blind until he has met the test laid down in Section 8894.

While the purpose evidenced by this appropriation bill is a noble one and as a practical matter the prevention of blindness might result in greater protection to the Blind Pension Fund created by the Constitution, yet we must hold that under Section 47 of Article IV the people of Missouri have made no provision for the prevention of blindness, and that the attempt by the Legislature to divert from the Blind Pension Fund the moneys appropriated under Section 12-U of House Bill No. 127 is of no effect, and that Section 12-U

Honorable Forrest Smith

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of House Bill No. 127 is unconstitutional as being in conflict with Section 47 of Article IV of the Constitution of Missouri.

Very truly yours,

FRANK W. HAYES  
Assistant Attorney General,

APPROVED:

ROY McKITTRICK  
Attorney General.

FWH:LC