

APPROPRIATIONS: Appropriation under Sec. 12 B of H.B. 127, Extra session, 1933, does not meet requirements of Constitution; likewise, appropriations under Secs. 12A1 and 12 are void and of no effect.

May 19, 1934. 5-19



Honorable Forrest Smith,
State Auditor,
Jefferson City, Mo.

Dear Mr. Smith:

This department acknowledges receipt of your letter of May 12, 1934 requesting an opinion on the following facts:

"The regular session of the Legislature on page 92, Section 4, appropriating to the Board of Barbers' Examiners \$8,550 for personal service and \$9,450 for operation, making a total appropriated for above board of \$18,000. In the extra session of the Legislature on page 12, Section 12B they appropriated \$3,000 from the general revenue fund to the Board of Barbers' Examiners fund.

"Will you please advise me if this appropriation under Sec.12B increases the appropriation to the Barbers Board to \$21,000.

"The same thing that applies to the Barbers' Board applies to a number of other boards, all set out in H.B. 127."

Section 4, Laws of Mo. 1933, p. 92 provides for the following appropriation:

"Board of Barber Examiners.--There is hereby appropriated out of the state treasury, eighteen thousand dollars (\$18,000.00) chargeable to the state board of barber examiners fund, the following amounts for the purposes herein expressed:

A. For personal service:
For the per diem of the board members and other necessary employees, and the salaries of stenographers, and deputy barber examiners.....\$8,550

D. For Operation:
General Expense, including communication, printing and binding, traveling expenses and other general expense. And Material and supplies consisting of stationery and office supplies.9,450

Total.....\$18,000 "

In House Bill 127, same being in the nature of an omnibus appropriation bill (Laws of Mo. 1933, Extra Session, Sec. 12B, page 12), the Legislature made a purported appropriation of \$3,000, said section being as follows:

"There is hereby appropriated out of the state treasury, chargeable to the general revenue fund, the sum of three thousand (\$3,000.00) dollars to the Board of Barbers Examiners Fund."

As you state in your letter, there are some other boards which received similar appropriations in House Bill 127, and as they will be affected by the opinion relating to the Board of Barber Examiners, we mention the same briefly in this opinion. Section 12, Laws of Mo. 1933 (extra session), page 12, provides:

"There is hereby appropriated out of the state treasury, chargeable to the General Revenue Fund and payable to the Board of Chiropractic Examiners Fund, the sum of Five Thousand Dollars (\$5,000.00)"

Section 12A1, Laws of Mo. 1933 (extra session), page 21 is as follows:

"There is hereby appropriated to the Grain and Warehouse Inspection Fund, out of the State Treasury, chargeable to the General Revenue Fund, the sum of Eighteen Thousand Dollars (\$18,000.00)"

The above purported appropriations appear to have been appropriated in almost identical language. There are a number of other appropriations made which refer to the original appropriation which are treated as additional appropriations and refer to the items contained in the original appropriation. To draw the line of distinction, we quote several of the same.

Section 10A, page 12, Laws of Mo. 1933 (extra session) is as follows:

"There is hereby appropriated out of the State Treasury, chargeable to the General Revenue Fund, and in addition to any and all other appropriations heretofore made for the purpose herein stated, to the State Oil Department for operating expenses, the sum of five thousand (\$5,000.00) dollars."

Section 12A, page 12, Laws of Mo. 1933 (extra session) provides as follows:

"There is hereby appropriated out of the state treasury, chargeable to the General Revenue Fund the sum of Fifteen Thousand Dollars (\$15,000.00) to the Bureau of Building & Loan Supervision Fund for personal services."

There are also a number of other appropriations made, each referring to the original appropriation as to items and purposes. We will not quote them here for the reason that they are not of such importance as to justify encumbering this opinion in order that the point in controversy may be clarified.

Section 19 of Art. 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 expenditures of all public money shall be published from time to time."

We construe the phrase used in said section - "and every such law, making a new appropriation, or continuing or reviving an appropriation" - to be sufficient authority for the Legislature to pass an additional appropriation, and we think the intention of the Legislature under Sec. 12B, supra, was to give the Board of Barber Examiners' Fund \$3,000 in addition to the appropriation made at the regular 1933 session. The same is likewise true of Sec. 12, supra, and Sec. 12A1, supra; however, the Legislature, in the appropriation which we are treating as additional, have not so designated, and we base our conclusion that it is an additional appropriation solely on the fact that no reference is made to the original appropriation and that the two sections are not in conflict. Assuming that they are additional appropriations, do they meet the requirements of the Constitution and the decisions of our state?

Referring again to the constitutional section, we find that it contains these phrases: "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". The appropriations in the three sections quoted specify the sum appropriated, but do not state the object to which it is to be applied nor the items as contained in the original appropriation, nor do they in any wise refer to the original appropriation.

In the decision in the case of State ex rel. Broadwater v. Seibert, 99 Mo. 122, wherein the question of the legality of a reappropriation was discussed, the Court, referring to Sec. 19 or Art. X of the Constitution, made the following observations (l.c. 125):

"It is obvious, from the reading of the foregoing provision, that a reappropriation of an unexpended balance of a former appropriation is upon the same footing as the original appropriation as to the necessity of stating the object for which such reappropriation is made. That question must be determined by the terms of the act of reappropriation and resort cannot be had to the first act for that purpose. By the terms of the reappropriation in this case, the object stated is 'to pay the balance due under the contract made for the enlargement of the capitol building.' When this reappropriation was made, there was nothing due the relator upon any contract for the enlargement of the capitol building, nor had there been any contract whatever made with him by the commissioners."

In the case of State ex rel. Kessler v. Hackmann, 304 Mo., 453, the Court said (l.c. 458-459):

"Section 19, Article X, of the State Constitution, provides: '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.'

"Relators cite the case of State ex rel. v. Wilder, where this court had under consideration funds of the Insurance Department, to show that the money in the Insurance Department was not public money in a sense that it was subject to be appropriated for any general purpose. That was a mandamus proceeding seeking to compel the State Auditor to issue a warrant in payment of an account incurred by the Insurance Department. In that case, however, there was an appropriation by act of the Legislature.

"On the other hand, this court has held that a fund, raised by an act for a special purpose, could not be paid out of the State Treasury except upon an appropriation by an act of the Legislature. (State ex rel. Fath v. Henderson, 160 Mo. 190, l.c. 214; State ex rel. v. Gordon, 236 Mo. 142, l.c. 158). In the case last cited the court had under consideration a fund for the support and maintenance of the Game Department. It was held that the creation of a special fund is not a continuing appropriation of the fund, or of any part of it, to pay accounts drawn against it. That the creating of the fund is one thing, and the appropriation of money to pay accounts against the fund is quite another thing."

In the case of Meyers v. Kansas City, 18 S.W. (2d) 900, the Court, in speaking of an ordinance, said (l.c. 901):

"The ordinance, No. 55,585, in which proposition 8 appears, contains no grant of power, other than that clearly comprehended within the words employed. There is no room, therefore, for the application of the doctrine of implied powers. This is especially true of a grant of powers to a corporation, municipal or otherwise, and if any doubt arises out of the use of the words employed, it is to be resolved in favor of the public and in limiting the

expenditures of the appropriation to the express terms for which it was made. State ex inf. Harvey v. Missouri Athletic Club, 261 Mo. 576, 598, 170 S.W. 904, L.R.A. 1915C, 876, Ann. Cas. 1916D, 931."

Likewise, in the case of State ex rel. Publishing Co. v. Hackmann, 314 Mo.33, l.c. 45-46:

"The fact that the appropriation acts for the support of the Highway Commission during the biennial periods of 1923 and 1924 (Sec. 95, Laws 1923, p.40) and 1925 and 1926 (Sec. 4, Laws 1925, p. 90), mention printing as a part of same and were enacted separately from the general appropriation acts is urged as a reason why the commission should not be required to conform to the requirements of the Public Printing statute (Chap. 89). It is difficult to ascertain with becoming patience wherein lies the logic of this convention. An appropriation act does no more than to set apart or designate the amount and the purposes for which the authorized expenditures may be made by the department named. Whether this be done in a general or a special appropriation act is immaterial in determining the manner in which the fund shall be expended. The manner of its expenditure is usually prescribed in the act creating the department or in a general statute, as at bar, applicable to all departments of a class."

In the beginning of this opinion we quoted sections 10A and 12A relating to appropriations in House Bill 127 which, along with a number of others, state the amount of the appropriation and the object to which it is to be applied. In Sec. 10A it is stated definitely that said appropriation is "in addition to any and all other appropriations heretofore made". The sections in controversy, as before stated, do not allude, refer or state for what purpose the appropriation is made.

In the case of the appropriation to the Board of Barber Examiners, what is the \$3,000 for? Why was the appropriation made? How is it to be used? It is placed in the hands of the Board with no instructions or directions, and what can the Board legally do with it? The original appropriation contains two items--one for personal service, in the amount of \$8,550--the other for operation in the amount of \$9,450. Granting the appropriation is legal, can the \$3,000 be pro-rated between the two items? Can the Board devote all of the \$3,000 for personal service, or all for operation? The other appropriations made in House Bill 127 state the item and the purpose for which it is to be used.

Sec. 43, Art. IV of the Constitution, subdivision 7, is also an authority for making appropriations, and we maintain that the appropriations in controversy do not meet the requirements of this section of the Constitution, the pertinent part of which is as follows:

"For the pay of the General Assembly, and such other purposes not herein prohibited as it may deem necessary; but no General Assembly shall have power to make any appropriation of money for any purpose whatsoever, until the respective sums necessary for the purposes in this section specified have been set apart and appropriated, or to give priority in its action to a succeeding over a preceding item as above enumerated."

CONCLUSION

It is the opinion of this department that the appropriation made under Sec. 12B of House Bill 127 does not meet the requirements of the Constitution of Missouri as interpreted by our courts in that said appropriation fails (1) to make any reference to the original appropriation; (2) there is no object or purpose mentioned for the appropriation; (3) there are no items mentioned; (4) there is nothing to warrant the conclusion that it is a part of or an additional appropriation; (5) the purported appropriation is too indefinite and does not conform to the law regarding appropriations.

For the same reasons, we are of the opinion that the appropriations made under Secs. 12 and 12A1 of House Bill 127 are likewise void and of no effect.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General

APPROVED:

ROY MCKITTRICK,
Attorney General