

CORPORATIONS: )

BRIDGE INCORPORATION: )

Unconstitutionality of Act, pages 337-343  
Laws of Missouri, 1935: Senate Bill No. 119.

10-5

October 5, 1935.



Honorable Dwight H. Brown  
Secretary of State  
Jefferson City, Missouri

Attention: Wm. F. Goodman,  
Corporation Attorney.

Dear Sir:

This is to acknowledge receipt of your letter of October 3, 1935, in which you request the opinion of this Department; your letter being as follows:

"Application has been made to this Department by Messrs. J. L. Jones of Saline County, Tyre W. Burton of Howard County, and H. R. Turley of Saline County, for a certificate of incorporation as State Highway Toll Trustees under the provisions of Senate Bill #119, approved by the Governor on the 19th day of April, 1935, Laws of Missouri, 1935, pages 337-343 inclusive.

"We respectfully request your official opinion as to the legality of said Act, and the procedure the Department should take in the premise."

Your first question is as to the legality of Senate Bill No. 119, found in Laws of Missouri, 1935, at pages 337-343, inclusive. Second, you inquire as to what procedure should be taken by your Department with reference

to the application of Messrs. J. L. Jones, Tyre W. Burton and H. R. Turley, for a certificate of incorporation as State Highway Toll Trustees under the provisions of the above Act.

It is our opinion that the Act is unconstitutional and void in that (1) it permits the creation of a public corporation by the voluntary act of not less than three, nor more than five, freeholders and qualified electors of this State, and does not require any legislative or judicial proceedings, but only the legislative action of the Secretary of State; (2) that the act attempts to create from taxation bridge and road properties constructed or acquired by the trustees for the benefit of the State of Missouri or for the benefit of any county or other political or civil subdivision of the State of Missouri; and (3) the Act is unconstitutional in that it attempts to exempt from taxation the bonds which it authorizes the trustees to issue, and, likewise, the income from such bonds.

As sustaining our position on the first point, we quote from the following cases:

There is a similarity between the Constitution of the State of Maine and the Constitution of the State of Missouri as to the distribution of the powers of government into three distinct departments, the legislative, executive and judicial, and in the case of State of Maine v. Butler, 105 Me. 91, 1. c. 96, the Supreme Court of that State said the following:

"The people of Maine, in organizing their government as a State, vested the legislative power of the government in a body 'to be styled the Legislature of Maine,' (Art. IV. Par. 1. Sec. 1.) and did not confer any such power on any other person or body, and did not authorize the legislature to do so. It follows that the legislature alone can exercise the legislative power and alone is responsible for its wise exercise.

and hence can transfer neither any of the power nor any of the responsibility to any other department or person. Says Judge Cooley in his Constitutional Limitations (6th Ed.) p. 137: 'One of the settled maxims in constitutional law is that the power conferred upon the legislature to make laws cannot be delegated by that department to any other body or authority. Where the sovereign power of the State has located the authority, there it must remain; and by the constitutional agency alone the laws must be made until the Constitution itself is changed. The power to whose judgment, wisdom, and patriotism this high prerogative has been intrusted, cannot relieve itself of the responsibility by choosing other agencies upon which the power shall be devolved, nor can it substitute the judgment, wisdom and patriotism of any other body for those to which alone the people have seen fit to confide this sovereign trust.' The proposition needs no other citation of authority, and we do not find it any where doubted.

"Further, the people in their constitution expressly divided the powers of the government into three departments, the legislative, executive and judicial, and declared that 'no person or persons belonging to one of these departments, shall exercise any of the powers properly belonging to either of the others, except in the cases herein expressly directed or permitted.' Art. III, Secs. 1, 2. Hence not only is the legislature not authorized to transfer any of its legislative power and responsibility, but it is expressly forbidden to transfer any part of them to a person or persons exercising either executive or judicial functions."

And we quote from the well-considered case of State of Missouri, ex rel. Russell Field et al, Board of Police Commissioners of Kansas City, Missouri, Relators, vs. Smith et al., 49 S. W. (2d) 74, 329 Mo., 1. c. 1026, as follows:

"One of the settled maxims in constitutional law is, that the power conferred upon the Legislature to make laws cannot be delegated by that department to any other body or authority. Where the sovereign power of the State has located the authority, there it must remain; and by the constitutional agency alone the laws may be made until the Constitution itself is changed. The power to whose judgment, wisdom and patriotism this high prerogative has been entrusted cannot relieve itself of the responsibility by choosing other agencies upon which the power shall be devolved, nor can it substitute the judgment, wisdom, and patriotism of any other body for those to which alone the people have seen fit to confide this sovereign trust.' (1 Cooley on Cons. Limitation, 224.)

"The Legislature may not delegate the power to enact a law, or to declare what the law shall be, or to exercise an unrestricted discretion in applying a law; but it may enact a law complete in itself designed to accomplish a general public purpose, and may expressly authorize designated officials within definite valid limitations, to provide rules and regulations for the complete operation and enforcement of the law within its expressed general purpose.' (Bailey v. Van Pelt, 78 Fla. 337.)

"The Legislature may, without violating any rule or principle of the Constitution, confer upon an administrative

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board or officer a large measure of discretion, provided the exercise thereof is guided and controlled by rules prescribed therefor.' (People v. Products Co., 195 Cal. 548; see also Ex parte Cavanaugh, 313 Mo. 375, 280 S. W. 15; St. Louis v. Ice & Fuel Co., 317 Mo. 907, 296 S. W. 993; Merchants Exchange v. Knott, 212 Mo. 616, 111 S. W. 565, and cases cited.)"

From the above and foregoing it is our conclusion that the Act is unconstitutional, and, therefore, you should refuse to issue the certificate of incorporation as State Highway Toll Trustees to the above named applicants.

Respectfully submitted,

COVELL R. HEWITT  
Assistant Attorney-General

*Approved:*  
*[Signature]*  
CRH:EG