

APPROPRIATIONS: An appropriation act cannot legislate -- "Revolving Fund" of State Fair cannot be appropriated until statute is amended.

1-22  
January 21, 1935.



Hon. Chas. W. Green  
Secretary  
Missouri State Fair  
Sedalia, Missouri

Dear Mr. Green:

This is to acknowledge your letter of January 18, 1935, as follows:

"I am enclosing you a copy of a bill for a Revolving Fund to be used at the Missouri State Fair, that I have drawn up, asking if you will give me an opinion as to whether we can use this, if and when the Legislature would pass it.

It would certainly be of great benefit to me here, if it could be used."

The copy of the proposed bill for a "revolving fund" to be used by the Missouri State Fair is quite lengthy and we will not quote same. The proposed bill provides for an emergency revolving cash fund to be used to pay miscellaneous small accounts. The effect of said appropriation act would be that an amount not to exceed \$5,000.00 at any one time would be drawn from the general revenue fund of the state treasury and placed in a local bank at Sedalia, Missouri, and checks drawn on said account to pay small incidental bills.

On September 14, 1933, this Department rendered to Honorable J. C. Breshears, Commissioner of the State Department of Agriculture, an opinion to the effect, "From the foregoing, it is our opinion that you should file the State Fair accounts with the State Auditor and payment of same should be by state warrants drawn on the funds applicable to their payment." Such

an arrangement we agree is quite unsatisfactory and hampers the State Fair in its activities because many day laborers do not like to wait for their compensation and if a revolving fund could be provided the salaries and small expenses of persons performing services and labor to the State Fair could be paid at the completion of their work. However, we are powerless to legislate and can only interpret the law as enacted.

Article 7, Chapter 87, R. S. Mo. 1929, pertains to the "State Fair", and Laws of Missouri, 1933, page 166, repealed many of the sections found therein.

Section 12353, Laws of Missouri, 1933, page 168, in part provides as follows:

"The State Commissioner of Agriculture shall be and is hereby constituted the official who shall have supervision of the State Fair and of all the legalized departments of the state which are of a regulatory nature for the advancement of horticulture and agriculture."

Section 12355, Laws of Missouri, 1933, page 168, provides:

"Upon the filing of proper vouchers and requisitions, duly certified by the Commissioner, the State Auditor shall issue his warrants monthly upon the State Treasurer for the payment of all approved salaries and accounts under the jurisdiction of the State Department of Agriculture."

Laws of Missouri, 1933, page 415, in part provides:

"All fees, funds and moneys from whatsoever source received by any department, board, bureau, commission, institution, official or agency of the state

government by virtue of any law or rule or regulation made in accordance with any law, shall, by the official authorized to receive same, and at stated intervals, be placed in the state treasury to the credit of the particular purpose or fund for which collected, and shall be subject to appropriation by the General Assembly for the particular purpose or fund for which collected during the biennium in which collected and appropriated."

See also, Sections 11465 and 11471, R. S. Mo. 1929.

A reading of the Laws of Missouri, 1933, page 415, supra, shows that the Legislature intended that the State Treasurer should at all times be in possession of all funds of the State. In fact, it makes it mandatory that all funds be placed in the treasury to the credit of the board, bureau, etc., as the case may be. Thus, if the money is in the treasury, how may it be withdrawn?

The proposed revolving fund would allow same to be drawn out by the Commissioner of Agriculture and deposited in a local bank at Sedalia, Missouri. However, present Section 12355, supra, provides that the State Auditor shall issue his warrant monthly upon the state treasurer for the payment of salaries and accounts after the filing of vouchers and requisitions by the Commissioner of Agriculture. If a revolving fund is provided by an appropriation act, in our opinion, it would contravene and be opposite to Section 12355, supra.

The question now arises as to whether or not an appropriation act can change the terms of Section 12355.

In State ex rel. Davis v. Smith, 75 S. W. (2d) 828, 1. c. 830, the Supreme Court of Missouri, en Banc, said the following:

"The Legislature could, at any time, provide a different method for paying the salaries and expenses of

this board by amending section 13525 or by repealing it and enacting a new law in lieu thereof, but until it does so, section 13525, R. S. 1929 (Mo. St. Ann. Sec. 13525, p. 637), remains the law of the state. We cannot escape the conclusion that if section 13525, R. S., is still the law, and if it provides that the salaries and expenses of the board shall be paid out of the fund created from the fees collected by the board, and out of that fund only, the attempt to appropriate money out of the general revenue fund to pay any part of such salaries or expenses is contrary to the existing law of the state, as declared in section 13525, supra."

From the above it is our opinion that until the above Section (12355) is amended that the Legislature could not by appropriation devise any other means or method for the payment of warrants or accounts of the State Fair. It thus follows that the revolving fund, if provided for by the Legislature, would be void. If you desire a revolving fund, then the statute should be amended.

Yours very truly,

James L. HornBostel  
Assistant Attorney-General.

APPROVED:

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ROY McKITTRICK  
Attorney-General.

JLH:EG