

ELEEMOSYNARY INSTITUTIONS)
APPROPRIATIONS)
EXECUTIVE BUDGET SYSTEM)

Classification of appropriations -
Cannot transfer from one classi-
fication to another.

November 5, 1935.



Hon. W. Ed. Jameson
President Board of Managers
State Eleemosynary Institutions
Jefferson City, Missouri

Dear Mr. Jameson:

This is to acknowledge receipt of your letter of October 8, 1935, in which you request the opinion of this Department. Your letter is as follows:

"As you are well aware, the manner of making up the budget for the various state agencies, under the old Budget Law, (Art. 4, Chap. 59, R. S. 1929), was under the supervision and control of the State Tax Commission but, under the new Budget Law, (Laws of 1933, pp. 459-463), the whole system of budgeting was changed in such a way as to be under the general supervision and control of the Governor, with the assistance of a Budget Director.

"Under the old Budget Law, (Sec. 9835 R. S. 1929), all requests for appropriations by state agencies were required to be divided into five distinct classes, (A, B, C, D, & E), covering different items of contemplated expenditures, and the old Budget Law, (Sec. 9838 R. S. 1929) prohibited the transfer of items appropriated under one class to any other class. These two sections of the old Budget Law, (Sec. 9835 and 9838), along with other sections of the old Budget Law, were expressly repealed by the new Budget Law, (Sec. 16, p. 463, Laws of 1933) and under the new Budget Law, (Sec. 12, p. 462, Laws of 1933)

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it is expressly provided that, 'At the end of any quarterly period any department may make changes in their allotments for the remaining periods, upon approval of the Governor.' Of course, this section, (Sec. 12), also provides that requests for appropriations by state agencies shall be originally classified in such manner as the Budget Director shall prescribe, subject to the approval of the Governor, as to all appropriations under the control of the Governor, but, if my understanding of the provision above quoted is correct, my Department may, with the approval of the Governor, make any changes or transfers in its original classification of contemplated expenditures as may seem necessary and proper in serving the best interests of the Department, at the end of any quarterly period.

"If my Department is authorized to make changes in its original allotments, as above indicated, I shall be able to meet the requirements of the WPA in the matter of additional federal aid for my Department, and thereby procure for my Department much needed financial assistance and save the state a considerable sum of money. For these reasons you will readily appreciate my very deep interest in the proper construction of Section 12 of the new Budget law.

"Please have your office furnish me with an opinion on this question at your earliest convenience."

If we understand your question correctly, which was supplemented by the writer's conference with you, it is this:

Does Section 12, of what is termed "Executive Budget System", Laws of Missouri, 1933, at pages 459-463, inclusive, give to your Department authority to reclassify its appropriations and shift funds from one division of its appropriation

act to another? For example, taking the appropriation for State Hospital No. 1, page 40, Laws of Missouri, 1935, would the Board of Managers of Eleemosynary Institutions have the authority, if the Board of Managers of Eleemosynary Institutions should conclude that it would be advisable to take \$50,000 from Section "C", Repairs and Replacements, and place same in Section "B", Additions, with the approval of the Governor? With this restatement of your question we shall proceed to answer your request.

At the General Election, November 8, 1932, Constitutional Amendment No. 3 was submitted by initiative petition and was adopted by the people, which repealed Section 13, Article V, and adopted new Section 13 in lieu thereof, which is as follows(Laws of Missouri, 1933, page 480):

"The Governor shall, not later than fifteen days after the convening of the General Assembly in each biennial session, submit a budget showing estimated available revenues of the state for the ensuing biennium and recommending a complete plan of expenditures. All recommended expenditures and appropriations shall be itemized. If any bill presented to the Governor contain several items of appropriation of money, he may object to one or more items or portions of items while approving other portions of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the items, or portions of items, to which he objects, and the appropriations, or portions thereof, (so) objected to shall not take effect. If the General Assembly be in session, he shall transmit to the house in which the bill originated a copy of such statement, and the items or portions thereof objected to shall be separately reconsidered. If it be not in session, then he shall transmit the same within thirty days to the office of the Secretary of State, with

his approval or reasons for disapproval. Provided, however, nothing herein contained shall be construed as authorizing the Governor to reduce any appropriation for free public school purposes."

(We have underscored portions added by the November, 1932, Amendment.)

Following the adoption of new Section 13, Article V, aforesaid, the General Assembly at the 1933 Session passed Senate Bill 227, Laws of Missouri, 1933, pages 459-463, namely the "Executive Budget System" and at the same time repealed Sections 9832 to 9847, inclusive, R. S. Mo. 1929. The material changes in Constitutional Amendment, Section 13, Article V, are that in requiring the Governor, not later than fifteen days after the convening of the General Assembly, at each annual session, to submit a budget, also that he shall recommend expenditures and appropriations to be itemized, and permitting the Governor to object to portions of each item if he sees fit; also limiting the power of the Governor to reduce any appropriation for free public school purposes. We find nothing in the provisions of Section 13, Article V, and Section 12 of the "Executive Budget System" which authorizes the transfer of money appropriated for one purpose in the Appropriation Act to another classification and to be spent for some other purpose than for which it was appropriated.

Section 43, Article IV, of the Missouri Constitution provides in part as follows:

"All revenue collected and moneys received by the State from any source whatsoever shall go into the treasury, and the General Assembly shall have no power to divert the same, or to permit money to be drawn from the treasury, except in pursuance of regular appropriations made by law."

And Article X, Section 19 of the Missouri Constitution provides 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."

It was decided in the case of *State ex rel. v. Holladay*, 66 Mo. 385, that Section 19, Article X, is self-enforcing.

In construing said sections of the Constitution the Supreme Court in the case of *State ex rel. v. Gordon*, 236 Mo. 142, 1. c. 158, said the following:

"The language of the foregoing provisions of the Constitution is clear and explicit and forbids the payment of money from the State treasury 'received from any source whatsoever' or 'of any funds under its management' except in pursuance of regular appropriations made by law. Because of this constitutional inhibition we have no difficulty in deciding that in the absence of an appropriation made by the General Assembly for that purpose no funds could be lawfully paid out of the State treasury for the support and maintenance of the game department, nor would relator be entitled to the audit and allowance of his accounts for salary and expenses. (See Secs. 11828 and 11836, R. S. 1909; *State v. Holladay*, 65 Mo. 77; *State ex rel. v. Holladay*, 66 Mo. 1. c. 389; *Fusz v. Spaunhorst*, 67 Mo. 1. c. 268; *State ex rel. v. Henderson*, 160 Mo. 1. c. 213, 214) In

addition to the foregoing citations it should be added that the General Assembly which enacted the game and fish law appropriated out of the State treasury the sum of two hundred thousand dollars, or so much thereof as should be necessary, from the game protection fund, to meet the expenses of the department for the biennial period therein named, and by so doing gave a legislative construction to the law and the Constitution as to the necessity of a biennial appropriation."

The Supreme Court in the case of State ex rel. Publishing Co. v. Hackmann, 314 Mo. 33, l. c. 53, said the following:

"It further appears that no money has been appropriated out of which relator's bill, as herein submitted, can be paid. And since under the provisions of Section 19, Article X, of the Constitution, no money may be paid out of the State Treasury, except in pursuance of an appropriation by law the respondent was and is without authority to issue a warrant in payment of relator's claim. For it cannot be said that a claim is paid pursuant to an appropriation act where it is paid out of money specifically appropriated for a different purpose."

And Section 8674, R. S. Mo. 1929, provides in part as follows:

"The boards of managers shall not use any money appropriated by the state for any other purpose than that for which the same was appropriated. * * *"

In the case of Schwartz v. City of Chicago, 223 Ill. App. 184, l. c. 192, the court said the following regarding

what constitutes an "appropriation":

"What constitutes an appropriation has been the subject of consideration in many cases, and it is variously defined as 'A setting apart from public revenue of a certain sum of money for a specific object, in such manner that the executive officers of the government are authorized to use that money and no more for that purpose and no other.' 4 Corpus Juris, 1460. Webster's definition of 'appropriation' so far as here pertaining is: 'The act of setting apart or assigning to a particular use or person in exclusion of all others; application to a special use or purpose, as of money to carry out some object.' Numerous other definitions are given but all to the same effect. The question then recurs, are the appropriations mentioned in the bill of complaint valid or invalid?"

In your request for the opinion you refer particularly to that portion of Section 12, page 462, Laws of Missouri, 1933, as follows:

"At the end of any quarterly period any department may make changes in their allotments for the remaining periods upon approval of the Governor."

We see nothing in said clause that would permit you to transfer a sum of money appropriated, from one classification of the appropriation to another classification, with the approval of the Governor. If such were the case and classifications "B", Additions, and "C", Repairs and Replacements, by and with the consent of the Governor, could be transferred to classification "A", Personal Service, it thus would thwart the will of the Legislature and the Legislature could just as well appropriate a lump sum to a department and then that department could spend said sum in any manner it saw fit, with the approval of the Governor. We do not think that it was the intention of the Legislature to give any such broad powers to the head of a

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department. While the money might be spent judiciously and to the better advantage of the department, yet, we do not think that this authority has been delegated to the department to spend the money as it sees fit.

We refer you to our opinions of February 8, 1934, May 10, 1934, and July 5, 1934, which, in our opinion, bear on the same question, in some degree, as submitted in this request.

Conclusion.

From the above and foregoing Constitutional provisions, statutes and constructions placed thereon by our Supreme Court and by other courts, it is our opinion that you have no authority to transfer moneys from one classification of your appropriation to another classification, even with the consent of the Governor so to do. In this opinion we do not mean to infer that the money would not be well spent and judiciously spent, but that the Constitution and the statutes do not permit same to be done as suggested in your letter.

Yours very truly,

COVELL R. HEWITT
Assistant Attorney-General

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney-General.

CRH:EG