

IN RE: HOUSE BILL NO. 74, Relating to placing of employees under the provisions of the Workmen's Compensation Act, in conflict with Section 44a of Article IV. Missouri Constitution.

2-19

February 4, 1935.

Honorable E. J. Keating  
Fifty-Eighth General Assembly  
House of Representatives  
Jefferson City, Missouri



Dear Sir:

We wish to acknowledge your letter of January 25th, wherein you state as follows:

"I have been appointed Chairman of a sub-committee of the Judiciary Committee of the House to write a committee substitute for House Bill No. 74 relating to placing the employees of the State Highways Commissions under the provisions of the Workmen's Compensation Act. I feel that this bill is probably in conflict with Section 44a, Article 4 of the Constitution in that the payments will be from funds of the Highway Department. The sub-committee will appreciate it very much if you will give us an opinion as to the constitutionality of this proposed act and any suggestions you will make will be deeply appreciated."

House Bill No. 74 of the Fifty-Eighth General Assembly provides:

"Section 1. That Article 13, Chapter 42, Revised Statutes of Missouri, 1929, be and the same is hereby amended by adding a new section thereto to be known as Section 8104a and to read as follows:

"Section 8104a. When the State Highway Commission shall undertake the construction of maintenance, under its own direction and supervision, of any road, culvert or bridge or any part thereof as provided in this Article, it shall be liable for injuries suffered by laborers and foremen incurred in such construction or maintenance and the amount of such liability shall be determined as provided in the Workmen's Compensation Law and shall be paid out of the funds under the control of said Commission as salaries and wages are paid, and such compensation shall be deemed a part of the salary or wage of the person so injured."

Section 44a of Article IV of the Missouri Constitution providing for a state highway system provides in part thus:

"The said bonds and the interest that will accrue thereon shall be paid out of a fund to be provided by the levy and collection of a direct annual tax upon all taxable property in the State. All state motor vehicle registration fees, license taxes or taxes authorized by law on motor vehicles (except the property tax on motor vehicles and state license fees or taxes on motor vehicle common carriers) and also all state taxes on the sale or use of motor vehicle fuels authorized by law, less the expense of the collection of such registration fees and license taxes on motor vehicles and taxes on the sale or use of motor vehicle fuels and less also the cost of maintaining the State Highway Department and the State Highway Commission and the cost of administering and enforcing any state motor vehicle law or traffic regulation shall, after the issuance of any

of said bonds and so long as any of said bonds herein authorized remain unpaid, be and stand appropriated without legislative action, to the payment of the principal and interest of the said bonds and for that purpose shall be credited to the State Road Bond Interest and Sinking Fund provided by law. If in any year there should be any balance in the State Road Bond Interest and Sinking Fund beyond the requirements of the next succeeding calendar year for interest and sinking fund of the said bonds, such balance shall be transferred and credited to the State Road Fund to be administered and expended under the direction and supervision of the State Highway Commission for the following purposes: to complete and widen or otherwise improve, and maintain the state system of primary and secondary highways as designated and laid out under existing law; to reimburse the various counties and political or civil subdivisions (including road districts) of the State for money expended by them in the construction or acquisition of roads and bridges now or hereafter taken over by the State as permanent parts of the state highway system to the extent of the value to the State of such roads and bridges at the time taken over, not exceeding in any case the amount expended by such counties or subdivisions in the construction or acquisition of such roads and bridges; to construct and maintain other state highways and bridges, and to widen or otherwise improve existing state highways and bridges in the congested traffic areas adjacent to the cities of St. Louis and Kansas City; to locate, establish, acquire, construct, and maintain, as hereinafter provided, supplementary state highways and bridges in each county of the State, in addition to those state highways and bridges designated and laid out under existing law, and to acquire materials therefor, and for such other purposes, and contingencies relating and appertaining to the construction and maintenance of such highways and bridges as the State Highway Commission may deem proper.

"After the principal and interest of all of said bonds shall have been paid, all state motor vehicle registration fees, license fees or taxes, authorized by law, on motor vehicles (except the property tax on motor vehicles and state license fees or taxes on motor vehicle common carriers) and also all state taxes on the sale or use of motor vehicle fuels, authorized by law, less the expense of the collection of such registration fees and license taxes on motor vehicles and taxes on the sale or use of motor vehicle fuels and less also the cost of maintaining the State Highway Department and the State Highway Commission and the cost of administering and enforcing any state motor vehicle law or traffic regulation, shall be and stand appropriated without legislative action to the State Road Fund, to be administered and expended under the direction and supervision of the State Highway Commission for the purposes and in the manner hereinbefore set forth."

The following question presents itself: Whether the General Assembly, by virtue of Section 44a of Article IV of the Missouri Constitution, may dictate to the State Highway Commission as to the manner in which the funds are to be spent?

It will be noted from a reading of Section 44a of Article IV of the Missouri Constitution, supra, that the proceeds of the sale of the bonds therein authorized are to be expended under the direction and supervision of the State Highway Commission; and it follows with the purposes that the money may be expended for.

"The proceeds of the sale \*\*\*\* of additional bonds herein authorized shall be expended under the direction and supervision of the State Highway Commission for the following purposes:  
\*\*\*\*."

\*\*\*\*\* be and stand appropriated without legislative action, to the payment of the principal and interest of said bonds and for that purpose shall be credited to the State Road Bond Interest and Sinking Fund provided by law. If

in any year there should be any balance in the State Road Bond Interest and Sinking Fund beyond the requirements of the next succeeding calendar year for interest and sinking fund beyond the requirements of the next succeeding calendar for interest and sinking fund of the said bonds, such balance shall be transferred and credited to the State Road Fund to be administered and expended under the direction and supervision of the State Highway Commission for the following purposes: \*\*\*\*

"After the principal and interest of all of said bonds shall have been paid \*\*\*\* shall be and stand appropriated without legislative action to the State Road Fund, to be administered and expended under the direction and supervision of the State Highway Commission and in the manner hereinbefore set forth. \*\*\*\*\*

"Said supplementary state highways to be constructed or improved and maintained in each of the counties of the State shall be selected by mutual agreement of the State Highway Commission, and the officials of such counties or political or civil subdivisions \*\*\*\*.

\*\*\*\*\* the State Highway Commission is hereby authorized and empowered to locate, construct, and maintain from the funds herein provided for construction of primary and secondary highways and from the State Road Fund \*\*\*\* and from such funds the State Highway Commission is hereby also authorized and empowered to locate, construct, and maintain highways and bridges in state parks, \*\*\*\*\*

"All the highways and bridges to be constructed and improved with the funds herein provided, shall be constructed, improved and maintained under the direction and supervision of the State Highway Commission \*\*\*\*.

"If, at any time the State Highway Commission should find that the proceeds from the fees, \*\*\* hereinabove provided, will not be sufficient to pay all expenses herein authorized \*\*\*\*.

"The remaining fifteen million dollars of bonds herein authorized shall never be issued until, in the opinion of the State Highway Commission \*\*\*\*.

The above sections are set out for the purpose of showing that the constitutional amendment authorizes the expenditure of funds under the direction and supervision of the State Highway Commission, and sets out the specific purposes for which the proceeds of the bonds shall be expended. Under its provisions it is clearly evident that the people of Missouri did not intend the General Assembly to dictate to the State Highway Commission as to the manner in which the proceeds are to be spent. The program of the State Highway Department involved the expenditure of millions of dollars, and they made certain that the work would not be hampered by naming the body under whose directions, and the specific purposes for which, the proceeds of the bonds were to be expended.

The Court in the case of State v. Thompson, 19 S.W. (2d) (Mo.) 642, l. c. 647, 648, bears out the above contention in the following language:

"The court will take cognizance of the fact that the State Highway Department is one of the largest, if not the largest, department operating under the State government at this time. The work of the Department probably has a more direct contact with every section of this state than any other department of government. The importance of its work in the construction of highways and bridges throughout the State, and the magnitude of its responsibilities will be recognized at once. Its program involves the expenditure of millions of dollars and the employment of thousands of skilled and unskilled laborers, in addition to its extensive staff of engineers and other employees.

The necessity for keeping the department supplied with funds with which to carry on its work, readily suggests itself. Any cessation, even though it be temporary, might disrupt a thoroughly organized, trained and efficient organization. The lack of funds would of necessity compel the disintegration of the Highway Department's organization, and, as well, would prevent the making of further contracts for the doing of other and additional work until such time as funds therefor might become available. These arguments were all made and considered in the campaign which resulted in the constitutional amendment known as Proposition No. 3. It was for the very purpose of preventing the occurrence of any lapse in activities of the Highway Department that the people of Missouri authorized this amendment to the Constitution."

From the foregoing, we are of the opinion that House Bill No. 74, supra, relating to the placing of employees of the State Highway Commission under the provisions of the Workmen's Compensation Act, is clearly in conflict with Section 44a of Article IV of the Constitution in that it dictates to the State Highway Commission the manner and purposes for which its funds are to be spent.

This opinion is not to be construed as holding that under the provisions of Section 44a of Article IV of the Missouri Constitution, the State Highway Commission cannot elect to become an employer within the terms of the Workmen's Compensation Act and use the funds at its command for such purposes, and such question is not before us for consideration. The only question before us is whether House Bill No. 74, supra, is in conflict with Section 44a of Article IV of the Missouri Constitution, and we are of such opinion.

Respectfully submitted,

APPROVED:

WM. ORR SAWYERS,  
Assistant Attorney-General.

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ROY MCKITTRICK,  
Attorney-General.

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