

LIQUOR CONTROL DEPARTMENT:
APPROPRIATIONS:

Legislature did not appropriate
for the payment of burglary or
theft insurance

July 28, 1936

7-30

Mr. W. H. Bouchard
Chief Auditor
Department of Liquor Control
Jefferson City, Missouri



Dear Mr. Bouchard:

This will acknowledge receipt of your
letter requesting an opinion from this office, which reads
as follows:

"On the first of this month
we presented to the State
Auditor a bill for \$113.00
for the payment of burglary
and robbery insurance on our
St. Louis office, and he re-
fused to pay, stating that
your office advised him to
do so.

"Our St. Louis office is lo-
cated on the twelfth floor of
the Mart Building, and handles
from \$1,000.00 to \$25,000.00
daily. The men in this office
are not bonded, as the Auditor
also refused to pay the premium
on their bonds. If this office
should happen to be burglarized
or robbed, we have no way of re-
covery and the State of Missouri
would be the loser by what ever
amount was taken.

"We would like to have your
opinion of the following: In
view of the facts stated above,

does not our appropriation under D-Operations, page 103, Laws of Missouri, 1935, give the Auditor the authority to pay the premiums on policies and bonds for the protection of the State.

"We are in urgent need of this opinion as the payment of these bills is being upheld, and the State is without protection in the St. Louis branch of this department, pending the issuance of this opinion.

"Thanking you for the many past favors and friendly advice, I am "

Article X, Section 19, of the Constitution of Missouri, provides as follows:

"No money 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."

1929, reads: Section 11421, Revised Statutes Missouri

"No warrant shall be drawn by the auditor or paid by the treasurer, unless the money has been previously appropriated by law; nor shall the whole amount drawn for or paid, under any one head, ever exceed the amount appropriated by law for that purpose."

In 59 Corpus Juris, Section 390, pages 250, 251, it is said:

"In some states, there are constitutional provisions requiring a distinct statement of the purpose of an appropriation in the bill making such appropriation; and, according to some authority, a requirement of specific appropriations has been held to be of equivalent force in requiring a definite statement of the purpose of appropriations. † * * *"

Whether or not you may insure the money collected by your office in St. Louis against burglary or theft, depends on whether or not the Legislature has appropriated funds specifically providing for the payment of such insurance. In construing an appropriation measure the courts have held that such appropriation must be strictly construed.

In Meyers v. Kansas City 18 S. W. (2d) 900, the court was construing an appropriation made by the Council of Kansas City, and, at l. c. page 901, said:

"Another general rule in the construction of statutes, applicable as well to muni-

cipal ordinances, is that acts of the character here under review are to be strictly construed. The limitation upon the use of the appropriation in proposition eight is such, by reason of its terms, that the invoking of the general rule is not necessary."

The Legislature, in Laws of Missouri 1935, pages 102, 103, Section 33, appropriated for your department a total amount of \$406,000.00. The appropriation is divided into three sub-divisions: (a) Personal Service, (b) Additions, (d) Operation. The only sub-division out of which the insurance in question might possibly be paid is sub-section (d) entitled 'Operations,' which reads as follows:

"D. Operation:

General expenses consisting of communication, binding and printing, transportation of things, travel, stationery, office supplies, and other general and miscellaneous expenses. \$200,000.00 "

We are of the opinion, however, that this section of the appropriation act is not broad enough and specific enough to entitle you to take out insurance on the moneys in question. It is true, at the outset, that the Legislature used the term 'general expenses;' immediately after the use of this term, however, it enumerates the items which the general expenses consist of. The term 'general expenses' is a broad term, and, used by itself, would be broad enough to include all the items enumerated in section (d). When the Legislature, however, used the words 'general expenses' by the enumeration of certain items we believe they limited and qualified the scope of the term 'general expenses.' If the Legislature had not intended

to limit the term 'general expense' and confine it to the enumerated items then it would have been useless for the Legislature to have made such an enumeration, because the term 'general expense' unrestricted would have been sufficiently broad to cover all the items listed in section (d).

At the close of Section (d) appears the words 'other general and miscellaneous expenses.' We do not believe, however, that these words are of any assistance in making the appropriation cover the question of insurance. The general rule is that where general words are followed by particular words the general words will be restricted and limited to the particular words used. This rule has been applied in the construction of appropriation. In State ex rel. v. Dierkes 214 Mo. 578, the Supreme Court had for consideration an appropriation under the St. Louis charter. The words in that appropriation which the relator relied upon were, "other expenses of the house of delegates." The Court, in discussing the question, at l. c. page 591 said:

"Now take either of the two appropriation ordinances in evidence, for they are both the same in words, except as to the last clause, we have no specific appropriation for this work or for this relator. Relator contends that the words 'other expenses of House of Delegates,' are sufficient to authorize the payment of this money out of the unexpended balance in that fund. The whole clause of the ordinance reads:

"Publishing proceedings, printing, stationery, office expenses, furniture, rent of telephone and other expenses, of House of Delegates. . \$8,000.00."

"To our mind the rule of ejusdem generis fully applies here. The term 'other expenses' means expenses of the character theretofore mentioned in that clause of the appropriation act and does not

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include an appropriation for work of the character performed by relator. To hold that it did include such would be to nullify the provisions of Section 14, Article 5, of the city charter, supra."

Following the above decision, we are of the opinion that the moneys appropriated by section (d) can only be used for the purposes enumerated in section (d) or for items by reason of similarity of which it can be said come within the enumerated classes under the rule of ejusdem generis. We do not believe that burglary or theft insurance is similar enough to the enumerated items to bring it within the provisions of the appropriation. It could not be said that insurance comes within the classification of communication, printing and binding, stationery, transportation of things, travel, or office supplies. It may be and undoubtedly would have been good business for the State to have appropriated money for the payment of burglary and theft insurance on the moneys collected by your branch offices. However, the State, in many instances, has not and does not insure its personal and real property. Failure of the State to appropriate moneys for the payment of insurance premiums evidences an intention on its part that it desires to carry its own insurance.

We are, therefore, of the opinion that the State has not appropriated funds out of which you may pay for the insuring of the moneys collected by your branch office in St. Louis against burglary and theft.

Yours very truly,

J. E. TAYLOR
Assistant Attorney General

APPROVED:

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

JET:LC