

APPROPRIATIONS: \$1680 of Appropriation Act of 1935 to State Service Officer invalid and void because of conflict with Sec. 4 of Act creating office of State Service Officer (Laws of Mo. 1931, p. 263)

March 27, 1936. 3-20



Honorable Forrest Smith,
State Auditor,
Jefferson City, Missouri.

Dear Sir:

This department is in receipt of your letter of March 26 regarding an opinion as to the following:

"HB 493 found on pages 263 and 264 of the 1931 Missouri Laws creates the office of State Service Officer. Section 4 of that Act fixes the salary and expenses of that office.

"Section 31, page 32 of the 1935 Missouri Laws makes an appropriation for the State Service Officer in excess of the amount fixed in Section 4 of the 1931 Laws.

"Please advise me how much money I may legally pay to the State Service Officer for the operation of his office during the biennium of 1935 and 1936."

In 1931 the General Assembly of the State of Missouri created the office of State Service Officer. Section 4 of said Act (Laws of Mo. 1931, p. 264) provides:

"The compensation of the state service officer shall be two thousand four hundred dollars (\$2400.00) per year with an allowance not to exceed six hundred dollars (\$600.00) per year for expenses of said office, to be paid from the athletic commission fund."

In 1935 the General Assembly of the State of Missouri made the following appropriation for the purpose of paying the salary and office expense of the State Service Officer (Laws of Mo. 1935, p. 32):

- A. Personal Service:
Salary of the state service officer.....\$4,800.00

- D. Operation:
For office expense consisting of general expense, including communication, printing and binding, transportation of things, travel, material and supplies; consisting of stationery and office supplies, and special material and supplies.....2,880.00 "

The appropriation of \$2,880.00 for office expense of the State Service Officer is clearly contrary to Section 4 of the Act creating the office, and is, in effect, an attempt to amend said law and to legislate by means of an appropriation act. This is impossible.

Article IV, Section 28 of the Constitution of the State of Missouri provides:

"No bill (except general appropriation bills, which may embrace the various subjects and accounts for and on account of which moneys are appropriated, and except bills passed under the third subdivision of section forty-four of this article) shall contain more than one subject, which shall be clearly expressed in its title."

In the case of State ex rel. Hueller v. Thompson, (Supreme Court of Missouri) 289 S.W. 338, the Court said:

"It is manifest that the real purpose of this provision was an undertaking to regulate, determine, and fix the salaries of all such officers or employees affected by the Appropriation Act whose compensation might not be fixed at all by

statutory law, or, if at all, where the statute fixed a maximum only. This provision has no other character than that of general legislation, and to inject general legislation of any sort into an appropriation act is repugnant to the Constitution (article 4, sec. 28, Constitution of Mo.), and the appropriation bill, as provided by the Constitution (article 4, sec. 28, may have a plurality of subjects, while a bill for general legislation may have but one.

"An appropriation bill is just what the terminology imports, and no more, its sole purpose is to set aside moneys for specified purposes, and the lawmaker is not directed to expect or look for anything else in an appropriation bill except appropriations.

* * *

"Here we have an appropriation act which not only appropriates money for the various subjects embraced therein, but which attempts to fix and regulate all salaries affected by the act which either have not been fixed by any statute, or not definitely fixed, which would include all salaries where the maximum alone was named. That the Legislature has the right by general statute to fix salaries is beyond question, but has it the right to do so by means of an appropriation act? We think not. * * * * "

In the recent case of State ex rel. Davis v. Smith (Supreme Court of Missouri, 1934), 75 S.W. (2d) 828, the Court held that an appropriation act appropriating money contrary to the express provision of a statute which provided that the Board of Barber Examiners should be self-sustaining from fees collected by said Board was void. The Court in its opinion said (l.c. 830):

"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."

CONCLUSION

In view of the foregoing, it is the opinion of this department that the Appropriation Act of 1935 (Laws of Mo. 1935, p. 32) appropriating \$2,880.00 for expenses of the office of the State Service Officer is invalid and void as to \$1,680.00 of said appropriation, for the reason that it conflicts with the express provision of Section 4 of the Act creating the office of State Service Officer (Laws of Mo. 1931, p. 263). However, inasmuch as Section 4 of said Act specifically provides that \$600.00 per year may be allowed for the expenses of said office, it is our opinion that you as State Auditor may legally pay this amount from the appropriation to the State Service Officer for the operation of his office.

Respectfully submitted,

JOHN W. HOFFMAN, Jr.,
Assistant Attorney General.

APPROVED:

ROY MCKITTRICK,
Attorney General.

JWH:AH