

LIQUOR: Appropriation for Department of Liquor Control cannot be used to pay expenses of witnesses subpoenaed by the State or Liquor Control.

May 24, 1937. 5-26

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Honorable Forrest Smith  
State Auditor  
Jefferson City, Missouri

Dear Sir:

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

"I have had presented to me for payment a number of bills similar to the following:

\*The following is an itemized account of the mileage and expenses due me in the matter of the application to revoke the state Liquor License of C. A. Cantrell.

Mileage from Quilin to Jefferson City and return, 560 miles at 5¢.....	\$28.00
Room and meals.....	4.90
Total.....	\$32.90

These bills have been approved by the Liquor Commissioner for payment out of his appropriation for Operation.

The question has arisen as to whether the state is liable for the payment of mileage and expenses in a hearing before the Supervisor of Liquor Control of this state.

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As the payment of similar bills promises to run into a large sum of money during the next biennium, I would like an opinion from your office as to the legality of such payments."

The following Section of the Liquor Control Act provides that the Supervisor of Liquor Control may issue subpoenas and all necessary processes when necessary.

"Sec. 13: The Supervisor of Liquor Control shall have the authority to revoke for cause all such licenses; \* \* \*

"Establish rules and regulations for the conduct of the business carried on by each specific licensee under the license and such rules and regulations if not obeyed by every licensee shall be grounds for the revocation of the license;

"The right to examine books, records and papers of each licensee and to hear and determine complaints against any licensee;

"To issue subpoenas and all necessary processes and require the production of papers, to administer oath and to take testimony;

"And to make such other rules and regulations as are necessary and feasible for carrying out the provisions of this act, as are not inconsistent with this act."

Furthermore, Section 26 of the Liquor Control Act provides when the Supervisor of Liquor Control may revoke licenses and in what manner.

"Sec. 26: Whenever it shall be shown, or whenever the Supervisor of Liquor Control has knowledge that a dealer licensed hereunder, has not at all times kept an orderly place or house, or has violated any of the provisions of this act, said Supervisor of Liquor Control shall revoke the license of said dealer, but the dealer must have ten (10) days' notice of the application to revoke his license prior to the order of revocation issuing, with full right to have counsel, to produce witnesses in his behalf in such hearing and to be advised in writing the grounds upon which his license is sought to be revoked."

From a careful reading of the above provisions of the Liquor Control Act it can be easily seen that the Legislature fully intended the Supervisor of Liquor Control should, when he deemed it necessary, subpoena witnesses to appear before him and testify in behalf of the State, as well as giving the licensee cited notice to appear and show cause why his license should not be revoked, and like opportunity to appear with witnesses and be heard. The law is mandatory that the Supervisor of Liquor Control give the licensee ten (10) days' notice to appear and show cause why his license should not be revoked for a violation of the Liquor Control Act. It follows that the same privilege is accorded the Supervisor of Liquor Control to present witnesses for the State when he deems it necessary. In many instances this is absolutely essential to prove the

guilt of said licensees. In the absence of such testimony there would be insufficient evidence to support a revocation.

Now that the Supervisor of Liquor Control has the power to subpoena witnesses when necessary to his case, we come to the main question, which is-- "Is the State liable for said witnesses' expenses, and if so, has the Legislature appropriated money for the payment of same?"

The common law rule was that witnesses' expenses and fees should be tendered before they could be compelled to attend court. *Smith vs. Barger*, 9 Yerg. (Tenn.) 322. This rule has been abrogated in most jurisdictions today by statutory provisions. In this State statutory provisions have been enacted whereby witnesses in most cases are entitled to fees and expenses. Section 11798 R. S. Mo. 1929 reads in part as follows:

"Witnesses shall be allowed fees for their services as follows:  
For attending any court of record, reference, arbitrators, commissioner, clerk or coroner, at any inquest or inquiry of damages, within the county where the witness resides, each day, \$1.50. For like attendance out of the county where witness resides, each day \$2.00. For traveling each mile in going to and returning from the place of trial, .05. For attending before a justice of the peace, each day, \$1.00. For traveling each mile in going to and returning from the place of trial before a justice of the peace, .05. For attending under the law to perpetuate testimony, the same fees as are allowed for attending a court of record in like cases."

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For this service the Clerk makes out a fee bill, and same is charged as costs in the case.

After a careful examination of the Appropriation Act of 1935 we find no provision in the whole Act specifically appropriating any money to defray expenses of witnesses called in by the Supervisor of Liquor Control, or subpoenaed by him to testify. Provisions pertaining to appropriations for the Liquor Department are contained in three Sections, which read as follows:

Section 33, pp. 102-103, Laws of 1935.

"There is hereby appropriated out of the State Treasury, chargeable to the general revenue fund, the sum of Four Hundred Six Thousand Dollars (\$406,000.00) to the Department of the Supervisor of Liquor Control, to pay for the personal service, additions and operating expenses required in connection with the administration of the Liquor Control Law, passed by the Fifty-Seventh General Assembly, Extra Session, as follows:

A. Personal Service.

Salaries and wages of Supervisor of liquor control, accountants, auditors, bookkeepers, inspectors, stenographers, clerks and other necessary employees... \$200,000.00

B. Additions:

Original purchase of transporting and conveying equipment, and necessary office furniture and equipment..... \$ 6,000.00

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

TOTAL..... \$406,000.00"

The Missouri Constitution prohibits any money being paid out of the Treasury of this State in the absence of an Appropriation Act by the General Assembly. Section 19 of Article X of the Missouri Constitution, provides in part:

"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. \* \* "

The reason for such a Constitutional provision is stated in C. J., Sec. 381, pp. 235-6, which reads as follows:

"The constitutions in many states provide that no money shall be paid or drawn from the state treasury or warrant drawn therefor except in pursuance of specific appropriations made by law. The object of such a provision is to prevent the expenditure of the people's funds without their own consent, expressed either by themselves in the state constitution or by their representatives in legislative acts. \* \* \* "

Section 43 of Article IV, of the Missouri Constitution prohibits money to be drawn from the State Treasury except in pursuance to regular appropriation made by law.

"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."

We think the Legislature never intended a witness who might have such information or knowledge of illegal acts by liquor licensees should be required to defray his own expenses to and from Jefferson City, Missouri, in order that the State of Missouri should gain the benefit of his testimony. This in no other instance is required of a witness in this State. Therefore it unquestionably must have been the intention of the Legislature in enacting Sections 13 and 26, supra, that said witnesses subpoenaed by the Supervisor of Liquor Control should testify for this State against a liquor violator should receive their expenses.

However, in determining the law on this question the intention of the Legislature is not the predominating factor. It may have fully intended these witnesses be reimbursed for expenses, but in the absence of an Appropriation Act to defray said expenses, said witnesses are not entitled to their expenses. The reason for this is already stated in 59 C. J., Section 381, supra, the object being to prevent the expenditure of the people's funds without their consent expressed either by themselves in the State Constitution or by their representatives in Legislative acts. Also Section 19 of Article X, Missouri Constitution and Section 43 of Article IV, supra, support this theory.

Turning to the Appropriation Act of 1935 for the Liquor Department, a most liberal interpretation of Sub-sections A and B cannot possibly include an appropriation for reimbursement to witnesses for expenses to and from said hearings. This leaves Sub-section D, which is an appropriation for operation, and the only provision in this Act which might be applicable, reads as follows:

" \* \* \* And other general and miscellaneous expenses."

In Meyers vs. Kansas City, 18 S. W. (2d) 900, 1. c. 901, the Court had the following to say as to the proper construction to be placed on Appropriation Acts:

"Another general rule in the construction of statutes, applicable as well to municipal ordinances, is that acts of the character here under review are to be strictly construed."

In William P. Dunwoody vs. U. S., 22 Ct. Cl. 269, 1. c. 280, the Court said:

"The adjectives contingent, incidental and miscellaneous, as used in appropriation bills to qualify the word 'expenses' have a technical and well-understood meaning; It is usual for Congress to name the principal classes of expenditure which they authorize, such as clerk hire, fuel, light, postage, telegrams, etc., and then to make a small appropriation for the minor and unimportant disbursements incidental to any great business which cannot be well foreseen, and which it would be useless to specify more accurately. For such disbursements a round sum is appropriated under the head of 'contingent expenses', or 'incidental expenses', or 'miscellaneous expenses' \* \* \*.

"It is clear that specific appropriation being made for the clerks, messengers, laborers, rent, light, fuel, stationery, postage, no disbursements can be made for any such expense from the appropriation for 'miscellaneous expenses' which covers non-enumerated petty disbursements necessarily made in the performance of the duties imposed by law".

The decision rendered above classifies miscellaneous expense as being more in the nature of a minor or unimportant disbursement which cannot well be foreseen, or petty disbursements.

It is our opinion that witnesses' expenses could have been specifically mentioned and avoided this confusion. Furthermore, a reasonable estimate as to the amount required for this purpose could have been determined, and therefore miscellaneous expense could not include witnesses' expense in view of the Appropriation Act of 1935 as passed by the General Assembly.

At the outset the General Assembly used the term "general expenses" following this by enumerating certain items of general expense. By the General Assembly enumerating certain items of expense we contend they confined said appropriations to these items; otherwise there would have been no need to enumerate since the term "general expenses" was in itself sufficient to include all items enumerated in Sub-section D of this Appropriation Act.

"Communication, binding and printing, transportation of things, travel, stationery, office supplies, and other general and miscellaneous expenses."

The general rule of construction of Appropriation Acts is that when general words follow particular words, the general words will be considered as applicable only to persons or things of the same general character or class, and cannot include wholly different things. In other words, the general words are restricted and limited to the particular words used in the Act.

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In Puritan Pharmaceutical Co. vs. Penn., 77 S. W. (2d) 508, l. c. 511, the Court in construing the following Section

"When any officer shall discover--  
being transported contrary to law"

had this to say:

"We do not see how this section can be made applicable to railroad transportation unless we discard the rule of construction, known as the ejusdem generis rule, that where general words in a statute follow specific words, designating special things, the general words will be considered as applicable only to things of the same general character as those which are specified. Mangelsdorf vs. Pennsylvania Fire Ins. Co., 224 Mo. App. 265, 26 S. W. (2d) 818."

It is therefore the opinion of this Department that the money appropriated in this Act can be used only for items enumerated therein, and cannot be used to defray expenses of witnesses subpoenaed by the Supervisor of Liquor Control to and from Jefferson City, Missouri.

Respectfully submitted,

APPROVED:

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Assistant Attorney-General

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(Acting) Attorney-General.

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