

GOVERNOR: The Governor of the State of Missouri cannot sign and enter into a compact with other states without legislative authority

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To His Excellency  
Honorable Lloyd C. Stark  
The Governor of the State of Missouri  
Jefferson City, Missouri

Dear Governor Stark:

You have recently requested of this department that you be advised of your authority to sign a compact sponsored by the Interstate Commission on Crime. A letter addressed to you on September 14, 1937, by Honorable Richard Hartshorne, Chairman of the Executive Committee, contains the following paragraph:

"I am enclosing the formal Interstate Compact for the supervision of Parolees and Probationers. You will note that the instrument consists of the Compact and 30 signature pages. We have sent exactly similar instruments to all of the other 29 states whose legislatures have authorized the instrument and have requested the Governors to sign each of the 30 pages, have them attested and sealed and delivered back to me at the Hotel Phillips in an enclosed envelope, similar to the one enclosed herewith, on or before September 23."

The authority of states to enter into a compact with another or other states is contained in Section 10 of Article I, of the Constitution of the United States:

"No State shall, without the consent of the Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State, or

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with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay."

The form of compact which has been submitted to you contains the provision that the Congress of the United States, effective June 6, 1934, grants to two or more states authority to enter into agreements or compacts for cooperative effort and mutual assistance in the prevention of crime and for other purposes. Referring to Mr. Hartshorne's letter of September 14, again, we call your attention to the statement "We have sent exactly similar instruments to all of the other 29 states whose legislatures have authorized the instrument." The Fifty-ninth General Assembly of Missouri had a bill of similar nature before it for consideration. The Legislative Journals show that it failed of passage. It would, therefore, appear that Missouri is not one of the 29 states "whose legislatures have authorized the instrument."

The question for determination is whether or not you, as Governor, have the authority to sign and enter into such a compact on behalf of the State of Missouri.

Section 1 of Article V, of the Constitution of the State of Missouri, provides for the executive officers of the State, consisting of the Governor, Lieutenant-Governor, Secretary of State, etc., and contains the provision, "and shall perform such duties as may be prescribed by law."

Section 4 of the same Article is as follows:

"The supreme executive power shall be vested in a chief magistrate, who shall be styled 'The Governor of the State of Missouri. ' "

Section 6 of the same Article is as follows:

"The Governor shall take care that the laws are distributed and faithfully executed; and he shall be a conservator of the peace throughout the State."

It must be conceded that in the State of Missouri the powers and duties of the office of Governor are authorized and controlled by the Constitution and the statutes. The general rule is tersely set forth in 59 Corpus Juris, page 114, paragraph 130:

"The governor has no prerogative powers, but possesses only such as are vested in him by constitutional or statutory grant. The legislature may require the governor to perform other duties than those specified in the constitution, and the extent and exercise of the governor's powers under statute will depend upon the particular provisions thereof."

In a decision by the Court of West Virginia, *Bridges v. Shallcorss*, 6 W. V. A. 562, l. c. 575, the court makes the statement:

"Powers or duties not specifically conferred upon the Governor by the constitution, the executive cannot exercise or assume any such powers except by legislative authority."

Again, in the case of *Richardson v. Young*, 125 S. W. 664:

"All sovereign power, under our form of government, is vested in the people. The Chief Executive has no prerogative powers as in monarchical governments."

The Supreme Court of the State of Missouri, in State ex rel. Major v. Shields, 272 Mo. 342, l. c. 346, enunciates and sets forth succinctly the office to be performed by the three departments of our government, in the following language:

"It will suffice to say that the germinal idea of a government of three coordinate branches is first found recorded in Aristotle's Politics where it is said that 'in every polity there are three departments: first, the assembly; second, the officers, including their powers and appointment; and third, the judging or judicial department.' The wisdom of this classification and its appropriate application in the framing of the laws of a free government has been illustrated by its incorporation into our national organic law and subsequently into the constitutions of the several states. The central idea in the creation of a government of this form is that the powers created shall be coordinate in their relations toward each other; and while supreme within their respective orbits they shall so move as not to invade the plane of activity of the others. Thus regulated, friction in the conduct of public affairs is avoided and that harmony promoted which is most conducive to the stability of government and, as a consequence, to the welfare of the people."

From an examination of the foregoing authorities, it is apparent that the Governor has only such authority

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as is vested in him by constitutional or statutory grant. A search of the constitution and statutes fails to disclose any power given the Governor which would authorize him to sign the proposed compact. In fact, as pointed out above, the last General Assembly refused to confer such authority.

It appears that the purpose of the compact is commendable and would facilitate the control and rehabilitation of persons on parole or probation. Many of the provisions are for cooperative efforts and mutual assistance in the prevention of crime and for the welfare of the people, and we regret that, under the law, Missouri is unable to become one of the parties to this meritorious compact, but before Missouri can enjoy the benefits, rights and privileges contained in the compact it will be necessary for the Legislature to authorize the Governor, on behalf of Missouri, to enter into such compact.

Respectfully submitted,

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APPROVED:

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