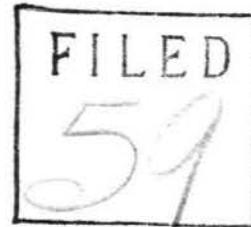


LABOR DEPARTMENT -- Appropriation for Department of Labor and
Industrial Inspection not limited to \$65,000 for biennium.

March 30, 1938 4/1



Honorable W. B. McGregor
Assistant Budget Director
Department of Budget
Rooms 427-428 Capitol Bldg.
Jefferson City, Missouri

Dear Sir:

This will acknowledge yours of the 24th, which reads as follows:

"In the making up of that part of the 1939-40 biennial budget that pertains to the Department of Labor and Industrial Inspection, I am somewhat confused as to the total amount of money that can legally be appropriated for this Department.

"Reading from Section 7826, page 455, 1919 Missouri Laws, which also appears as Section 13220 of the 1929 Revised Statutes, the following language is quoted:

" 'Provided, that no salary or expense shall be paid for the Commissioner of Labor and Industrial Inspection or Deputy Commissioner or Deputy Industrial Inspectors or clerks in excess of the receipts from the fees paid into the Industrial Inspection fund; and provided further, that the salary of the Commissioner of Labor and Industrial Inspection and his assistants, and all expenses for traveling, office rent, printing, stationery, postage and other items of expenditure, shall be limited for the biennial term of two years to an amount not exceeding \$65,000, and all moneys remaining in said Industrial Inspection fund at

the close of each biennial term, after the payments of the salaries and expenses herein provided for shall be transferred to the General Revenue fund.'

"The Legislature during the Fifty-Fourth General Assembly amended the law but did not repeal the foregoing section, but repealed 'Section 6737, 6739 and 6744 of Article I; and Section 6781 of Article V; and Section 6851 of Article X, all of Chapter 54 of the Revised Statutes 1919, and all other Acts or parts of Acts inconsistent with the provision and operation of this Act are hereby repealed.'

"I am anxious in having you determine if Section 13220 of the 1929 Revised Statutes remains of full force and effect or if it was the intention of the Legislature to repeal this part of the law as 'inconsistent with the provision and operation' of the 1927 Act.

"An opinion from your Department clearing the matter up will aid this Department in making its recommendations for appropriations for the Department of Labor and Industrial Inspection to the Legislature.

"I shall be glad to talk to you or any member of your Department if I have not made myself clear in this letter."

Section 7826, p. 455, Laws 1919, was carried forward in the revision of 1919, and appears as Section 6784, R. S. Mo. 1919. This section was therefore on the statute books in 1927 when the Legislature passed S. B. 149, page 292, Laws 1927, which now appears as Sections 13166 - 13178, R. S. Mo. 1929, and which we shall hereafter refer to as the act of 1927.

Section 6781, R. S. Mo. 1919 provided for the appointment of a State Industrial Inspector and provided further for the appointment of two Assistant Industrial Inspectors and ten Deputy Industrial Inspectors.

Section 6784, provided for the salaries of the Industrial Inspector, his two Assistants and his Deputies, and then contained these two provisos:

" ** Provided, that no salary or expense shall be paid for the industrial inspector or assistant or deputy industrial inspectors or clerks in excess of the receipts from the fees paid into the industrial inspection funds; and provided further, that the salary of the industrial inspector and his assistants, and all expenses for traveling, office rent, printing, stationery, postage and other items of expenditure, shall be limited for the biennial term of two years to an amount not exceeding sixty-five thousand dollars, and all money remaining in said industrial inspection fund at the close of each biennial term, after the payment of the salaries and expenses herein provided for, shall be transferred to the general revenue fund."

The act of 1927 expressly repeals Section 6781, supra, (Sec. 14, p. 296, Laws 1927). By repealing Section 6781, the Legislature abolished the office of State Industrial Inspector. Therefore, the provisions in Section 6784, supra, (now Section 13220, R. S. Mo. 1929) relating to the salary of such officer would be meaningless even if it had not been repealed.

The two provisions inquired about relate entirely to the method of payment of the salary of the Industrial Inspector and the limit of expenditures on behalf of his office, and when the act of 1927 specifically abolished that office, it is evident that these provisions became meaningless even if they were considered as not repealed.

However, Section 14 of the act of 1927 specifically repealed certain numbered sections and "all other acts or parts of acts inconsistent with the provisions and operation" of the new act.

The provision of Section 6784, supra, limited the expenditures for the office of Industrial Inspector to the Industrial Inspection fund. However, by the act of 1927, that fund was abolished and all fees formerly going into it were required to be paid into the State Revenue Fund (Sec. 13, p. 296, Laws 1927). Therefore, the provision as to the Industrial Inspection fund is wholly inconsistent with the provision as to turning the fees into the State Revenue fund and the operation of the act of 1927 as to this fee would be entirely inconsistent and conflicting with the provisions of the former law as to the handling of the fees collected in connection with this act.

The second provision, which limits the total expenditures of the office of the Industrial Inspector to \$65,000 for the biennial term of two years, definitely refers to that particular office of Industrial Inspector, which office has now been abolished. It will be noted that said proviso, after limiting the total expenditures to \$65,000, requires the balance remaining in said Industrial Inspection fund to be turned over to the General Revenue fund. However, as pointed out above, the Industrial Inspection fund was abolished by the act of 1927. It seems clear, therefore, that the two provisions under discussion relate entirely to the old set-up under the State Industrial Inspector.

The act of 1927 definitely created a new set-up for the work formerly done by the State Industrial Inspector. Section 2 of said act declares the purpose thereof in Section 2, page 293, in the following language:

" ** it being the declared purpose of the general assembly to effect a consolidation, under the single department created by this act, the departments of labor statistics, and industrial inspection, as provided for by chapter 54, Revised Statutes of 1919, and to trans-

fer the powers, duties and functions of these departments, commissions, boards and bureaus to the department hereby created in order to bring about a more orderly and economical administration of the laws pertaining thereto."

The act then goes on to make provisions for everything covered by the old Section 6784. The provisions of the act are conflicting with those in said Section 6784. For instance, Section 6784 provides that all fees collected shall go into the State revenue to be credited to the Industrial Inspection fund, whereas the act of 1927, Section 13, provides that said fees shall be paid into the State revenue fund; the salary provided for the chief office in Section 6784 was \$2,500.00, whereas the salary for the chief office under the act of 1927 was \$3,500.00; the subordinate officers provided for in Section 8 of the act of 1927 are different from those provided for in said Section 6784; the salaries provided for the subordinate officers are set forth in Section 9 of the act of 1927, which are different in many particulars from those set forth in Section 6784. The provisions for branch offices under Section 5 of the act of 1927 are different from the provisions for branch offices under said Section 6784, and the provisions of Section 6784 are inconsistent with the provisions and operation of the act of 1927 as heretofore pointed out.

It would therefore seem clear that the act of 1927 repealed Section 6784, supra, both by reason of the fact that it expressly repealed all acts inconsistent with its provisions and operations and also by reason of the fact that the said act created an entirely new set-up governing the same subject matter. As was said in the case of Meriwether vs. Love, 167 Mo., 1.c. 521:

"** the Legislature cannot be supposed to have intended that there should be two distinct enactments embracing the same subject-matter in force at the same time."

It seems that the Legislature in 1929 carried Section 6784 over into the revision of that year. An ex-

amination of the said section as it appears in the revision of 1929 (Section 13220) will show that the revision changed the said section in several particulars. It substituted the title "Commissioner of Labor and Industrial Inspection" for the title of "State Industrial Inspector", which may have been justified by Section 10 of the act of 1927. However, the second sentence of Section 13220 changed the words \$2,500.00 to \$3,500.00, and by substituting the title "Commissioner of Labor and Industrial Inspection" for "State Industrial Inspector" made the first proviso read that the salary and expenses of the new officer should be paid from the fees paid to the State Industrial Inspection funds, although no such Inspection funds are now available, since the new act of 1927 required all fees to be paid into the State Revenue fund.

Likewise, the second proviso as revised reads that any surplus remaining in the Industrial Inspection fund after payment of the expenses provided for, which should not in any event exceed \$65,000 for a biennium, should be transferred to the General Revenue fund, but, as heretofore pointed out, there is no longer any such fund as the Industrial Inspection fund. It therefore seems clear that these two provisos were originally directed to the office of State Industrial Inspector and that they cannot have any application to the present office of Commissioner of Labor and Industrial Inspection. The mere fact that the said section 6784 was carried over into the revision of 1929 after it had been repealed by the act of 1927 did not operate to keep said section in force. *State ex rel. vs. Nolte*, 187 S. W. 896.

It is interesting also to note that every Legislature since the passage of the act of 1927 has appropriated in excess of \$65,000 for each of the biennial periods since that time. It would therefore seem that the various Legislatures since the passage of the act of 1927 have not considered that the limitation referred to above was applicable to appropriations for the Commissioner of Labor and Industrial Inspection. The interpretation placed upon this provision by subsequent Legislatures is entitled to some weight in determining the proper construction to be placed upon it. *State ex inf. vs. Long-Bell Lumber Company*, 12 S. W. (2d) 64.

Hon. W. B. McGregor

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CONCLUSION

It is, therefore, the opinion of this office that the last provision, now appearing as Section 13220, R. S. Mo. 1929, does not apply as a limit to the amount of appropriation which can be made for the expenses of the office of Commissioner of Labor and Industrial Inspection.

Respectfully submitted

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APPROVED:

J. E. TAYLOR
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