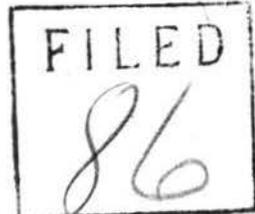


STATE HIGHWAY PATROL: Workmen employed on construction of  
radio patrol stations cannot be paid as em-  
ployees of the patrol.

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January 6, 1938

Hon. Louis V. Stigall, Chief Counsel  
Missouri State Highway Department  
Jefferson City, Missouri



Dear Mr. Stigall:

This will acknowledge receipt of your letter of  
December 15, 1937, which reads as follows:

"At the request of the State  
Highway Commission and the Superin-  
tendent of the State Highway Patrol,  
I am writing to request your advice  
concerning the following matter.

"It involves the State Highway Patrol  
Appropriation Act, pages 11 and 12,  
1937 Session Laws. Item A covers  
'Salaries and per diem of the super-  
intendent, captains, members of the  
patrol, radio engineers and operators,  
and other necessary employees.'  
(Underscoring ours). Item B. covers  
'purchase of property, building material  
and equipment, radio transmitting, re-  
ceiving and testing equipment, and the  
installation thereof.'

"After the estimates, upon which the  
appropriation bill was based, were  
made and after the bill was enacted,  
it was ascertained that there were in-  
sufficient funds under Item B to pay  
for the land and buildings for six  
patrol radio stations. This is due to  
an unexpected increase in the cost of  
the land and also the cost of the  
buildings. However, the Superintendent  
now finds that he will have a surplus  
in the funds provided for in Item A.

"It is, therefore, the desire of Col. Casteel and the Commission, in order to utilize this Item A surplus and in order to construct the stations as originally contemplated, to employ workmen to work upon these buildings and to pay their wages out of the Item A appropriation. It is our feeling that this can be legally done so long as such workmen are legally employees of the patrol. It was our thought to insert in the contracts for the construction of these stations a special provision permitting the Commission and the Superintendent in their discretion to designate certain workmen of the contractor as Patrol employees from time to time and to pay directly to such employees their wages out of the Item A appropriation. Any such payments, of course, so made would be deducted from the lump sum payment to the contractor under the contract.

"In view of the fact that it now appears that these radio stations cannot be fully constructed unless this plan is resorted to, we will indeed appreciate your earnest consideration of this matter, and particularly of our suggestion as to the method in which we feel it might possibly be legally effected."

The powers and duties of the State Highway Patrol are set forth in the act creating the Patrol, found at pages 230-236, Laws of 1931. It will be observed from reading this act that the Patrol is not empowered to provide its own quarters nor to employ any persons other than the members of the Patrol. Section 19 of said act as amended, Laws of 1933, page 409, provides as follows:

"The commission of permanent seat of government shall provide suitable offices which shall at all times be open and in charge of the superintendent or some member of the patrol designated by him. The state highway commission shall employ and assign to the superintendent such clerical force and other subordinates and shall furnish to the patrol office equipment, stationery, postage supplies, telegraph and telephone facilities as the commission shall deem necessary and the commission shall also provide offices, equipment, stationery, postage and clerical force for the headquarters of each district of the patrol. The state radio station shall be under the control of and at the service of the superintendent for such regular and emergency bulletins and service as the superintendent may require from time to time."

It will be seen from the foregoing statute that the employees which the State Highway Commission shall assign to the Superintendent of the Patrol are "such clerical force and other subordinates . . . . as the commission shall deem necessary". It is axiomatic that in construing statutes words are to be taken in their plain and ordinary meaning. As was said in the case of *Betz v. K.C.S. Railway Co.*, 314 Mo. 390, l.c. 411:

"And in 36 Cyc. 1114, it is furthermore said: 'In the interpretation of statutes, words in common use are to be construed in their natural, plain, and ordinary signification. It is a very well-settled rule that so long as the language used is unambiguous, a departure from its natural meaning is not justified by any consideration of its consequences, or of public policy, and it is the plain duty of the court to give it force and effect.'"

Likewise, when the language of a statute is clear, there is no room for construction. As was said in *Betz v. K.C.S. Railway Co.*, supra, at l.c. 411:

"Ragland, J., speaking for this court, in banc, in *Grier v. Railway Co.*, 286 Mo. l.c. 534, reviewing the selfsame statute, recognized the well-settled rule when he said: 'The primary rule for the interpretation of statutes is that the legislative intention is to be ascertained by means of the words it has used. All other rules are incidental and mere aids to be invoked when the meaning is clouded. When the language is not only plain, but admits of but one meaning, these auxiliary rules have no office to fill. In such case there is no room for construction.' And, in *Clark v. Railroad Co.*, 219 Mo. l.c. 534, Lamm, P.J., speaking for this division of our court, aptly and pointedly said: 'Courts have no right, by construction, to substitute their ideas of legislative intent for that unmistakably held by the Legislature and unmistakably expressed in legislative words. Expressum facit cessare tacitum. We must not interpret where there is no need of it. (*McCluskey v. Cromwell*, 11 N.Y. l.c. 601-2).'"

By following these rules of giving words their plain and ordinary meaning and of getting the intention of the legislature from the clear wording of the statute, we are driven to the conclusion that the employees to be assigned for the use of the Superintendent of the Patrol are such employees as will assist that force in carrying out the duties imposed upon it by law. The Patrol has no duty or power to build radio Patrol station buildings. The word "clerical" is defined in Webster's New International Dictionary as follows: "of or pertaining to a clerk or copyist"; and by the same authority, "clerk" is defined as "one employed to keep records or accounts, to have charge of correspondence, or the like, with or without

administrative, executive or other authority." The same authority defines "subordinate" as "one who stands in order or rank below another". To classify workmen employed upon buildings being erected by the State Highway Commission for the use of the Patrol as part of a "clerical force or other subordinate" would be to give to the statute an entirely different meaning from that the legislature clearly had in mind.

If we are right in our conclusion as to what employees the legislature had in mind by "clerical force and other subordinates" to be assigned to the Patrol, then we must assume that the legislature had the same employees in mind when it drafted Section 1, page 11, Laws of 1937, of the appropriation act for the expenses of the Patrol. Said section provides in part as follows:

"There is hereby appropriated out of the State Treasury, chargeable to the State Highway Department Fund, the sum of Nine Hundred Ninety-seven Thousand One Hundred Sixty Dollars (\$997,160.00) to pay the salaries and per diem of the State Highway Patrol, its officers and employees, and for the purchase, replacement and repair of property, equipment and supplies, and for the administration and operating expenses of the State Highway Patrol, as follows:

A. Personal Service

Salaries and per diem of the Superintendent, captains, members of the patrol, radio engineers and operators, and other necessary employees. . . . \$509,810.00

B. Additions:

Purchase of property, building material and equipment, radio transmitting, receiving and testing equipment, and the installation thereof. . 127,500.00."

Appropriation acts are to be construed by the same rules as other legislation. The rule has been stated in 59 C.J., para. 401, pages 262, 263, as follows:

"An appropriation law is to be construed under and by the same rules as other legislation. Where the intention of the legislature is plain and obvious, there is no room for judicial construction of an appropriation. They are to be construed without liberality towards those who claim their benefits; but are not to be construed so strictly as to defeat their manifest objects. The language is to be presumed to have been used in its natural and ordinary meaning, and not to be given a forced and unnatural construction."

If we give to the wordings, "its officers and employees" and "other necessary employees", found in the foregoing appropriation act, their plain and ordinary meaning, we must conclude that they mean the employees are those who shall assist the Patrol in carrying out its duties. Since the Patrol has no power, much less duty, to construct radio Patrol station buildings, we do not see how workmen employed in constructing such buildings could be paid out of Item A of the appropriation act, supra.

We think the foregoing conclusion is further strengthened by reference to Article X, Section 19, Constitution of Missouri, which provides, among other things, as follows:

"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."

Hon. Louis V. Stigall

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January 6, 1938

Since the appropriation act under consideration has followed the foregoing constitutional mandate by distinctly specifying the objects for which Item A is to be expended and by distinctly specifying that the fund provided for in Item B may be expended to pay wages of workmen you inquired about, we do not believe any reasonable construction of this act could justify charging the wages of workmen employed as you suggest in your letter to Item A of the appropriation act.

CONCLUSION

It is, therefore, the opinion of this office that the wages of workmen employed in the construction of buildings for State Highway Patrol radio stations cannot be paid out of Item A of the State Highway Patrol appropriation act, pages 11-12, Laws of 1937.

Respectfully submitted,

HARRY H. KAY  
Assistant Attorney General

APPROVED by:

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J.E. TAYLOR  
(Acting) Attorney General

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