

HIGHWAY PATROL:

Section 20 of the State Highway Patrol Act, page 235, Session Laws of 1931, does not authorize maintenance of patrol out of money appropriated to state highway ~~patrol~~ department. Article 4,

March 14, 1938      Section 44a of the Constitution limits appropriation to enforcement of motor vehicle law and traffic violation.

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

Dear Sir:

This is to acknowledge receipt of your request dated March 9, 1938, for an official opinion which is as follows:

"I am informed by the members of the Highway Commission that they have taken up with you orally the question of the legality of paying the clerical force of the State Highway Patrol out of state highway funds appropriated by the Legislature to the State Highway Department. I have been asked to frame the inquiry in proper shape in order that it may be made as a written request of the State Highway Department.

Section 20 of the so-called State Highway Patrol Act is as follows:

'All salaries and expenses to be paid, when.  
- All salaries and expenses of members of the patrol and all expenditures for vehicles, equipment, arms, ammunition, supplies and salaries of subordinates and clerical force and all other expenditures for the operation and maintenance of the patrol shall be paid monthly and shall be paid by the state treasurer out of the proceeds of state motor vehicle fees and license taxes and state taxes on the sale or use of motor vehicle fuels as provided in section 44a of article IV of the Constitution of this state as amended by a vote of the people at the general election November 6, 1928, upon warrants drawn by the state auditor based upon bills of particular and vouchers certified by the officer or employee designated



by the Commission.' Laws of Missouri, 1931, page 235.

The appropriation act of 1937 Legislature appropriated out of the state highway funds arising out of motor vehicle fees and license taxes, the sum of \$997, 160 '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.' Laws of Missouri, 1937, p. 11.

The 1937 Legislature appropriated also \$1,828, 290 'to maintain the salaries, wages and per diem of the State Highway Commission and the State Highway Department, the commissioners, officers and employees, for the purchase, repair and replacement, of property and equipment, and for the general administration and operating expenses of the State Highway Commission and the State Highway Department.' Laws of Missouri, 1937, p. 12. There was also \$30,000,000 appropriated for location, relocation, construction and maintenance of highways, and an additional \$125,000 for an emergency revolving fund to be expended for no other purposes except those set out in the sections appropriating the two amounts above stated.

The question propounded by the Highway Commission is as follows:

Does Section 20 of the State Patrol Act empower the Commission to pay clerks in the State Highway Patrol out of moneys appropriated to the State Highway Department by the 1937 Legislature as hereinabove set out; or is the payment of such salaries to be paid only out of the \$997,160 appropriated by such Legislature out of State Highway Funds directly to the Patrol?

The State Highway Commission is to have a meeting March 18. If your office shall have determined the matter prior to that time, the Commission

would appreciate the courtesy of your opinion, although it does not desire to interfere unduly with the other demands of your office.

Most Respectfully yours,

LOUIS V. STIGALL,  
Chief Counsel.

P.S. Both where clerical appropriation to Patrol has been exhausted and where such funds still remain in the patrol.

L.S."

Article IV, Section 44a of the Constitution of Missouri which provides for a state highway system, after authorizing the state through the state legislature to issue bonds not to exceed one hundred thirty five million dollars (\$135,000,000) and not to exceed issuance of more than twenty five million dollars (\$25,000,000) in any year, further provides:

"\* \* \* The said bonds and the interest that will accrue thereon shall be paid out of a fund to be provided by the levy and collection of a direct annual tax upon all taxable property in the State. All state motor vehicle registration fees, license taxes or taxes authorized by law on motor vehicles (except the property tax on motor vehicles and state license fees or taxes on motor vehicle common carriers) and also all state taxes on the sale or use of motor vehicle fuels authorized by law, less the expense of the collection of such registration fees and license taxes on motor vehicles and taxes on the sale or use of motor vehicle fuels and less also the cost of maintaining the State Highway Department and the State Highway Commission and the cost of administering and enforcing any state motor vehicle law or traffic regulation shall, after the issuance of any of said bonds and so long as any of said bonds herein authorized remain unpaid, be and stand appropriated without legislative action, to the payment of the principal and interest of the said bonds and for

that purpose shall be credited to the State Road Bond Interest and Sinking Fund provided by law. If in any year there should be any balance in the State Road Bond Interest and Sinking Fund beyond the requirements of the next succeeding calendar year for interest and sinking fund of the said bonds, such balance shall be transferred and credited to the State Road Fund to be administered and expended under the direction and supervision of the State Highway Commission for the following purposes:"\* \* \* \* \*

Section 20 of the State Highway Patrol Act, page 236, Session Laws of Missouri, 1931, provides as follows:

"All salaries and expenses of members of the patrol and all expenditures for vehicles, equipment, arms, ammunition, supplies and salaries of subordinates and clerical force and all other expenditures for the operation and maintenance of the patrol shall be paid monthly and shall be paid by the state treasurer out of the proceeds of state motor vehicle fees and license taxes and state taxes on the sale or use of motor vehicle fuels as provided in section 44a of article IV of the Constitution of this state as amended by a vote of the people at the general election November 6, 1928 upon warrants drawn by the state auditor based upon bills of particular and vouchers certified by the officer or employee designated by the commission."

By this Act it was the intention of the legislature that the State Highway Patrol be paid out of the state highway fund as created by Article IV, Section 44a of the Constitution of Missouri and not out of the general fund. The legislature, in passing this Section 20, relied on the constitutionality of the Act by the powers and limitations granted in Article IV, Section 44a, wherein it empowered the use of the tax collected in accordance with the article on the phrase "\* \* less the cost of maintaining the state highway department and state highway commission and the cost of administering and enforcing any state motor vehicle law or traffic regulation."

Constitutional provisions and especially constitutional limitations must be construed as to the intention. This Constitutional provision and limitation was set out under the amendment of the Constitution in reference to the building and maintaining of highways. The phrase as above set out which mentions enforcing any state motor vehicle law or traffic regulation was for the purpose of insuring safety upon the highways which would be constructed in accordance with the constitutional provisions of Section 44a of Article IV. This section of the Constitution provides primarily for the payment of the road bonds and interest on same as collected under the highway system provision of the constitution. The money used in maintenance of the highway commission is derived from motor vehicle registration fees, state license taxes and state tax on motor vehicle fuels, less certain expenses in the collection thereof and among which is the cost of enforcing motor vehicle laws and traffic violations.

Article 10, Section 19 of the Constitution of Missouri provides:

"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; nor unless such payment be made, or a warrant shall have issued therefor, within two years after the passage of such appropriation act; 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. A regular statement and account of the receipts and expenditures of all public money shall be published from time to time."

Under Article IV, Section 43 of the Constitution, no money can be diverted from the state treasury except by regular appropriation made by law. In the case of State ex rel. Jesse A. Tolertao, State Game and Fish Commissioner v. John P. Gordon, State Auditor, 236 Mo. 142, l. c. 157, paragraph 1, the Court held:

"It is contended by relator that: 'Article II of Chapter 49, Revised Statutes 1909, contains the law of this State in reference to the preservation of fish and game, specifies the salary of the game warden, and provides that it shall be paid out of the game protection fund by warrant drawn by the State Auditor on said fund in the hands of the State Treasurer. When the above act became effective, August 16, 1909, it required no further appropriation by the Legislature, or any other body, to pay the salary and expenses incurred by the State Game and Fish Commissioner.'

In support of the foregoing proposition relator maintains that the provisions of the game law referred to constitute a continuing appropriation, under which respondent was authorized and it was his duty to issue warrants for such salary and expenses as were properly chargeable to the game protection fund, without any further appropriation for that purpose by the General Assembly as made in section 62 of said House Bill No. 1200.

We cannot agree to that contention. It is provided by section 43, article 4 of the Constitution of this State that: '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 any money to be drawn from the treasury, except in pursuance of regular appropriations made by law.' And by section 19, article 10, that: 'No moneys shall ever be paid out of the treasury of this State, or of any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made, or a warrant shall have issued therefor, within two years after the passage of such appropriation act; 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." \* \* \*

In the case of State ex rel. St. Joseph Water Company v. Jacob Geiger et al. Constituting Board of Managers of State Hospital Number 2, 246 Mo. 74, l.c. 92, the Court held the following Article X, Section 19 and Article IV, Section 43 of the Constitution of Missouri holds that no money shall be paid out of the treasury of the state on any warrant issued by the state auditor unless in pursuance of an appropriation by law.

In the case of State ex rel. Russell et al. v. State Highway Commission, 42 S.W. (2d) 196, l.c. 203, the Court said in paragraphs 9 and 10 of its opinion, as follows:

"We cannot tell all that was in the minds of those who drew the amendment or of the voters who voted for it. We do not say any of the things we have suggested, were. But we are controlled by what the amendment says, so far as its recitals are consistent and intelligible, and it is our duty to give effect to every part if possible." \* \* \* \* \*

Article IV, Section 44a of the Constitution of Missouri provides for a continuing appropriation under the Act but excepts the clause under which the State Patrol Act is functioning from the continuing appropriation. The continuing appropriation is for the payment of bonds and interest thereon issued in the amount of one hundred thirty five million dollars (\$135,000,000).

In the case of State ex rel. Kessler et al. v. Hackmann, State Auditor, 264 S.W. 367, paragraph 1, the Court said:

"\* \* \* \* \* Relators cite the case of State ex rel. v. Wilder, 199 Mo. 470, 97 S.W. 940, where this court had under consideration funds of the insurance department, to show that the money in the insurance department was not public money in a sense that it was subject to be appropriated for any general purpose. That was a mandamus proceeding seeking to compel the state auditor to issue a warrant in payment of an account incurred by the insurance department. In that case, however, there was an appropriation by act of the Legislature.

On the other hand, this court has held that a fund, raised by an act for a special purpose, could not be paid out of the state treasury except upon an appropriation by an act of the Legislature. State ex rel. Fath et al. v. Henderson, 160 Mo. 190, loc. cit. 214, 60 S.W. 1093; State ex rel. v. Gordon, 236 Mo. 142, loc. cit. 158, 139 S.W. 403. In the case last cited the court had under consideration a fund for the support and maintenance of the game department. It was held that the creation of a special fund is not a continuing appropriation of the fund, or of any part of it, to pay accounts drawn against it. That the creation of the fund is one thing, and the appropriation of money to pay accounts against the fund is quite another thing. The language of the Constitution is unequivocal; it requires an appropriation before payment of money received by the state 'from any source whatsoever.' The money collected by the board is received by the state; it goes into the state treasury. To make it more specific, the requirement that an appropriation by the Legislature will be necessary before money can be paid out of the treasury of the state, it is applied, not only to state funds, but to 'any of the funds under its management.'"

The appropriation set out at page 11, Section 1, Session Laws of 1937, appropriating money for the State Highway Patrol for the years of 1937 and 1938 reads as follows:

"Highway Patrol.--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:"

\* \* \* \* \*

It appropriates nine hundred ninety-seven thousand one hundred sixty dollars (\$997,160.00) for the maintenance of the Highway Patrol. This appropriation act includes most of the items set out in Section 20, page 236 of the Highway Patrol Act of the 1931 Session Laws.

The appropriation act set out at page 12, Section 1, Session Laws of 1937, appropriating money for the administration of the Highway Commission and Highway Department for the years of 1937 and 1938 reads as follows:

"Administration Expenses, Additions and Operation.--There is hereby appropriated out of the State Treasury, chargeable to the State Highway Department Fund, the sum of One Million, Eight Hundred Twenty-Eight Thousand, Two Hundred Ninety Dollars (\$1,828,290.00) to pay the salaries, wages and per diem of the state highway commission and the state highway department, the commissioners, officers and employees, for the purchase, repair and replacement of property and equipment, and for the general administration and operating expenses of the state highway commission and the state highway department, as follows:"\* \* \* \* \*

Nothing is said in this appropriation about appropriating anything in this act for the use of the State Highway Patrol. It appropriated one million, eight hundred twenty-eight thousand, two hundred ninety dollars (\$1,828,290.00) for the department. Any warrant drawn on the State Highway Appropriation Act by the state auditor and accepted by the state treasurer in favor of the State Highway Patrol would be null and void; that this appropriation act does not include maintenance for the State Highway Patrol, but appropriates for a different purpose. In the case of State ex rel. McKinley Pub. Co. v. Hackmann, State Auditor, 282 S.W. 1007, the plaintiff sought to mandamus the state auditor to compel him to pay a printing account entered into by contract with the State Highway Commission. The appropriation act of that year did not include printing, and the court in denying the peremptory writ said in paragraphs 10 and 11 of its opinion:

"It further appears that no money has been appropriated out of which relator's bill, as herein submitted, can be paid. And since under the provisions of section 19, article 10, of the Constitution,

no money may be paid out of the state treasury, except in pursuance of an appropriation by law, the respondent was and is without authority to issue a warrant in payment of relator's claim. For it cannot be said that a claim is paid pursuant to an appropriation act, where it is paid out of money specifically appropriated for a different purpose."

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Since the legislature has passed a separate appropriation act appropriating money direct to the State Highway Patrol, it should be read in connection with Section 20 of the State Highway Patrol Act of the Session Laws of 1931 to ascertain the intention of the legislature in passing Section 20 of the State Highway Patrol Act of the Session Laws of 1931. If it was the intention of the legislature that the State Highway Patrol participated in the appropriation made to the Highway Commission and Highway Department, it would not have been necessary to pass a separate appropriation for the benefit of the State Highway Patrol. As to the intention of the legislature, 59 Corpus Juris, page 961, paragraph 571 states:

"In construing a statute to give effect to the intent or purpose of the legislature, the object of the statute must be kept in mind, and such construction placed upon it as will, if possible, effect its purpose, and render it valid, even though it be somewhat indefinite. To this end it should be given a reasonable or liberal construction; and if susceptible of more than one construction, it must be given that which will best effect its purpose rather than one which would defeat it, even though such construction is not within the strict literal interpretation of the statute, and even though both are equally reasonable. Where there is no valid reason for one of two constructions, the one for which there is no reason should not be adopted. The legislature cannot be held to have intended something beyond its authority in order to qualify the language it has used. A statute will not be construed to permit an act to be done by indirection when the statute prohibits its being done directly."

## CONCLUSION

In view of the above authorities, will say that it is the opinion of this office that Section 20 of the State Highway Patrol Act of the Session Laws of 1931, does not empower the State Highway Commission to pay clerks in the State Highway Patrol out of moneys appropriated to the State Highway Department and State Highway Commission by the 1937 Commission. The appropriation to the State Highway Department and State Highway Commission does not set out specifically that the State Highway Patrol should participate in that particular appropriation.

Taking into consideration that the state legislature saw fit to make a separate appropriation to the State Highway Patrol the expenses of the State Highway Patrol can only be paid by warrants drawn by the state auditor upon the state Highway Patrol appropriation. If the funds to the appropriation to the State Highway Patrol become exhausted, it would be illegal for the state auditor to draw warrants upon the appropriation to the State Highway Department for the payment of the maintenance of the State Highway Patrol.

Respectfully submitted,

W. J. BURKE  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney General

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