

ANIMALS AND APPROPRIATIONS: Appropriation for diseased animals in H B 716, Section 12a is invalid because other laws must be referred to in order to ascertain the purpose of the appropriation contrary to Article X, Section 19.

September 12, 1939

9-14



Dr. H. E. Curry  
State Veterinarian  
Department of Agriculture  
Jefferson City, Missouri

Dear Dr. Curry:

This department is in receipt of your request for an official opinion which reads as follows:

"We are receiving many requests from livestock owners wanting to know when they will receive state indemnity on cattle condemned on account of reacting to the agglutination test for Bang's disease, under the cooperative Federal-State Bang's Disease Control program, after signing a waiver agreement on indemnity, as per copy enclosed.

"The Sixtieth General Assembly enacted a law known as House Bill 667 providing for the carrying on of Bang's disease eradication work in cooperation with the Federal government and authorizing the Commissioner of Agriculture to certify to claims for payment of indemnity on cattle that were condemned on account of reacting to the agglutination test. House Bill 716, enacted by the Sixtieth General Assembly, provides on page 10, section 12-a, as follows:

'Pay for diseased animals slaughtered.-- There is hereby appropriated out of the State Treasury, chargeable to the General Revenue fund the sum of Ten Thousand Dollars (\$10,000.00) to pay for diseased animals slaughtered under the provisions of Section 12536f inclusive according to House Bill 667 passed by the Sixtieth General Assembly.'

"You will note that Section 12536-f of House Bill 667, referred to in Section 12-a of House Bill 716, provides that the State Veterinarian may certify that herds are Bang's free when all animals in the herd have passed three consecutive clean tests within the period of a year. This section does not provide for the payment of indemnity; therefore, I would greatly appreciate it if you would give me an opinion as to whether I may lawfully certify to claims for indemnity on cattle condemned as reacting to the agglutination test for Bang's disease, under the provisions of section 12-a of House Bill 716, after the owner has signed a waiver agreement on indemnity."

Article X, Section 19 of the Constitution of Missouri provides in part as follows:

"\* \* \* \* 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. \* \*"

We can find no Missouri cases which interpret this provision of the Constitution, but we refer you to the case of State ex rel. Hopkin v. King's County, 52 N. Y. 556, in which a New York constitutional provision almost identical with the one quoted above was involved. The provision provided as follows:

"Every law which imposes, continues or revives a tax shall distinctly state the tax and the object to which it is to be applied; and shall not be sufficient to refer to any other law to fix such tax or object."

The court said at l. c. 567:

"\* \* \* The Constitution says that neither the tax nor the object shall be fixed by reference to any other law. The object of the tax imposed by this law is fixed only by references to chapter 700 of the Laws of the same session. It is 'to provide for the payment of the canal and general fund deficiencies directed to be paid by the act, chapter 700 of the Laws of 1872.' The provision is for certain deficiencies mentioned in the act referred to. If the act to which reference is made be resorted to, reference to still other acts, and to a report of the comptroller to the legislature, is necessary to ascertain the particular deficiencies intended to be provided for, and the object of the tax. There is no attempt, as in the act authorizing the debt, to preserve the semblance of a compliance with the Constitution, by incorporating into the enactment a phraseology somewhat resembling that of the Constitution.

"The object of the tax is plainly and clearly fixed, or attempted to be fixed, by a reference to other acts and State documents. There is no escape from the conclusion to which this examination leads, and the only safety is in adher-

ing strictly and giving effect to every part of the Constitution, regulating the appropriation of public moneys, and restraining and regulating taxation and the debt-creating power. The power of taxation can only be exercised within the limits and in the forms prescribed by the Constitution."

We believe that the case is apposite and is authority for holding that the appropriation of ten thousand dollars found in House Bill 716, Section 12a which is to be used for diseased animals "slaughtered under the provisions of Section 12536f, inclusive, according to House Bill 667 passed by the Sixtieth General Assembly," is not a proper appropriation because it is necessary to look to House Bill 667 to ascertain the object of the appropriation and is, therefore, in violation of Article X, Section 19, of the Constitution of Missouri.

#### CONCLUSION

It is, therefore, the opinion of this department that the appropriation of ten thousand dollars to pay for diseased animals slaughtered under the provisions of Section 12536f, inclusive, according to House Bill 667 passed by the Sixtieth General Assembly is not a proper appropriation because it violates Article X, Section 19 of the Constitution of Missouri which provides that in an appropriation act it shall not be sufficient to refer to any other law to fix the object of such act.

Respectfully submitted,

ARTHUR O'KEEFE,  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney General

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