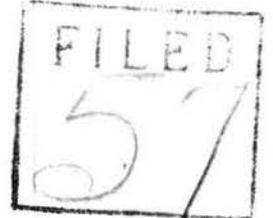


APPROPRIATIONS: Where an act creating an office provides for compensation and traveling only within the state, then such officer is not authorized to incur travel expenses outside of the state even though his appropriation provides for such expense.

March 8, 1939

Honorable Jewell Mayes
Commissioner of Agriculture
Jefferson City, Missouri



Dear Sir:

This is in reply to yours of recent date, wherein you ask the following question:

"Is the Commissioner of Agriculture permitted to travel on official business outside the State, or is the State Auditor warranted in paying such outside State traveling expense, under present laws and the terms of the 1937-38 appropriation?"

The act which created the office of the Commissioner of Agriculture is found in Laws of Missouri 1933, page 167 which provides in part as follows:

"The Governor, by and with the advise and consent of the Senate, shall appoint a Commissioner of Agriculture, who shall hold his office for a term of four years, and who shall be in charge of the State Department of Agriculture, which is hereby created. Said Commissioner of Agriculture shall be a practical farmer and well versed in agricultural science, and shall be subject to removal from office for cause by the Governor at his pleasure. The compensation of the Commissioner shall be three thousand dollars (\$3,000) per annum, payable monthly. He shall receive traveling and other expenses within the State necessarily incurred in the performance of his duties. * * * * *

It will be noted from a reading of this section that the law makers clearly expressed their intent that the Commissioner of Agriculture should receive traveling and other expenses within the state necessarily incurred in the performance of his duties.

Since this act only provides for traveling and other expenses within the state, then by applying the rule "the expression of one thing is the exclusion of all others" it is apparent that the law makers did not intend to pay traveling and other expenses of the Commissioner of Agriculture anywhere except within the state.

By examining the appropriation bills for that department for the years 1933 and 1935, we find that the law makers only provided for "travel" in the appropriation. While in the appropriation for 1937 the law makers provided for "travel within and without the state". By this 1937 appropriation it looks like an attempt was made to legislate, that is, it looks like the law makers by the appropriation act attempted to provide pay for traveling and other expenses within and without the state, which was broader than the terms of the act creating the office of the Commissioner of Agriculture.

It is a well known rule that law makers can not legislate by appropriation bills. This would be in violation of Section 28 of Article 4 of the Constitution because in this particular case the law makers would be attempting to amend the act which created the office of the Commissioner of Agriculture by broadening the provisions of it to include pay for the commissioner and traveling expenses when outside the State of Missouri. By referring to the title of the appropriation act for that department for 1937, it is quite apparent that the law makers only intended to appropriate money for that department and not to legislate.

CONCLUSION

From the foregoing, it is the opinion of this department that by virtue of the terms of the act creating the office of the Commissioner of Agriculture that he is not authorized to incur traveling and other expenses except those which are incurred within the State of Missouri. We are further of the opinion that even though the 1937 appropriation act provides for travel within and without the state, yet the commissioner is not authorized to incur such expense.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney General

APPROVED:

J. W. BUFFINGTON
(Acting) Attorney General

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