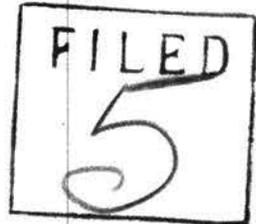


MUNICIPAL CORPORATIONS:
FEDERAL SURPLUS COMMODITIES
CORPORATION:
APPROPRIATION OF PUBLIC
MONEYS:

Municipal corporations of the second
class may appropriate public moneys
to be used by Surplus Commodities
Corporation to carry out the purposes
for which that corporation was formed.

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Mr. E. A. Barbour, Jr.
Woodruff Building
Springfield, Missouri

Dear Sir:

This is in reply to yours of recent date wherein you request an opinion from this department on the question of whether or not the City of Springfield, which is a municipal corporation of the second class, can provide, loan or give public funds to the Federal Surplus Commodities Corporation in order that the governmental plan of food stamps may be used in that city.

In connection with your request you state as follows:

"Several weeks ago the City of Springfield and Greene County adopted what is commonly known as the Stamp Plan for the City of Springfield and the County of Greene. Pursuant to this plan, the City of Springfield and Greene County deposited with the Federal Surplus Commodities Corporation \$10,000.00 each. The money that the City and County put up was to be used as a revolving fund, the contract being that upon notice of ten days the City and County, or either would have returned their \$10,000.00

"As you perhaps know, the Stamp Plan is briefly as follows: A person who is receiving aid from the Government pays a dollar and receives a green stamp which is good for one dollar in trade for any food commodity he desires

to buy. At the time he receives his green stamp he is given what is called a fifty cent orange stamp; this orange stamp is good for fifty cents worth of commodities which have been designated as surplus commodities by the Federal Surplus Commodities Corporation, a corporation set up by the Department of Agriculture."

You also state in your letter that this money is used merely as a revolving fund and eventually it will be returned to the city. Regardless of whether or not the money is a revolving fund, this department is inclined to the view that the answer to your question would be the same in either case. Municipal corporations derive their powers and authority solely from the statutes and Constitution.

The provisions of the Constitution which would be pertinent to this question are as follows:

Article IV, Section 45, the part of which is pertinent here, reads as follows:

"The General Assembly shall have no power to give or to lend, or to authorize the giving or lending of the credit of the State in aid of or to any person, association or corporation, whether municipal or other, or to pledge the credit of the State in any manner whatsoever, for the payment of the liabilities, present or prospective, of any individual, association of individuals, municipal or other corporation whatsoever: * * * *"

Article IV, Section 47, the part of which is pertinent here, reads as follows:

"The General Assembly shall have no power to authorize any county, city, town or township, or other political

corporation or subdivision of the State now existing, or that may be hereafter established, to lend its credit, or to grant public money or thing of value in aid of or to any individual, association or corporation whatsoever, or to become a stockholder in such corporation, association or company: * * * * *

Article IX, Section 6, the part of which is pertinent here, reads as follows:

"No county, township, city or other municipality shall hereafter become a subscriber to the capital stock of any railroad or other corporation or association, or make appropriation or donation, or loan its credit to or in aid of any such corporation or association, or to or in aid of any college or institution of learning or other institution, whether created for or to be controlled by the State or others. * * * * *

If the City of Springfield is authorized to appropriate this money for the aforesaid purposes, it is by virtue of the provisions of Section 6486, R. S. Missouri 1929, subsection XXVIII, as amended in Laws of Missouri, 1933, page 315, as follows:

"To provide for the support, maintenance and care of insane and sick poor persons, paupers, and the indigent and helpless of the city."

Also, subsection LXXII of the same section found at page 322, Laws of Missouri, 1933, in so far as it is pertinent to this question, provides as follows:

"* * * In addition to the powers specially enumerated and conferred in the foregoing provisions of this

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section, the council shall have further power to pass, amend and repeal all ordinances, all rules and police regulations, not inconsistent with the Constitution and laws of the United States and the Constitution of this state, and necessary for the good government, peace, order, health and welfare of the city and trade and commerce thereof, or that may be necessary and proper for carrying into effect the provisions of this article * * "

From your correspondence, it seems that some may take the view that to make this appropriation for the aforesaid purposes would be in violation of the criminal statutes. Under Title 7, Section 612c, U. S. C. A., Congress made an appropriation to carry out the provisions of the Agricultural Adjustment Act. This section stated one of the purposes of the act was:

"* * * * *
(2) encourage the domestic consumption of such commodities or products by diverting them, by the payment of benefits or indemnities or by other means, from the normal channels of trade and commerce or by increasing their utilization through benefits, indemnities, donations or by other means, among persons in low income groups as determined by the Secretary of Agriculture; * * * * *"

The Federal Surplus Commodities Corporation was set up by the Department of Agriculture to carry out the plan provided for under the aforesaid Agricultural Adjustment Act. This plan is set out in Title 15, Section 713c, U. S. C. A. This section provides as follows:

"In carrying out the provisions of clause (2) of section 612c of Title

7, as amended, the Secretary of Agriculture may transfer to the Federal Surplus Commodities Corporation, which Corporation is hereby continued, until June 30, 1942, as an agency of the United States under the direction of the Secretary of Agriculture, such funds, appropriated by said section 612c, as may be necessary for the purpose of effectuating said clause (2) of section 612c: Provided, That such transferred funds, together with other funds of the Corporation, may be used for purchasing, exchanging, processing, distributing, disposing, transporting, storing, and handling of agricultural commodities and products thereof and inspection costs, commissions, and other incidental costs and expenses, without regard to the provisions of existing law governing the expenditure of public funds and for administrative expenses, including rent, printing and binding, and the employment of persons and means, in the District of Columbia and elsewhere, such employment of persons to be in accordance with the provisions of law applicable to the employment of persons by the Agricultural Adjustment Administration.

"In carrying out clause (2) of section 612c, the funds appropriated by said section may be used for the purchase, without regard to the provisions of existing law governing the expenditure of public funds, of agricultural commodities and products thereof, and such commodities, as well as agricultural commodities and products thereof purchased under the preceding paragraph hereof, may be donated for relief purposes."

It will be noted that the purposes of the aforesaid acts were to consume the surplus farm products and to distribute them to the poor people who were recipients of federal or state funds under the relief program.

The authority to appropriate public funds for public purposes under the aforesaid provisions of the Missouri Constitution has been under consideration by the courts in this state on a number of occasions. In the case of Jasper County Farm Bureau v. Jasper County, 286 S. W. 381, the Supreme Court, in Division Two, in an opinion by Judge Otto, held that public funds could be appropriated to carry out the provisions of the Farm Bureau Act and that it was not in conflict with the aforesaid provisions of the Constitution to appropriate funds for that purpose. In connection with this case the court, at l. c. 383, said:

"It is also true that many objects for which money may be appropriated are so clearly public in their nature that there could not well be any difference of opinion on the subject, such, for example, as public charities, and appropriations provided for the care of the indigent, destitute, and insane, either in institutions exclusively under state control or those maintained by corporations for purely charitable purposes. In 1894 this court, in banc, in the case of State ex rel. City of St. Louis v. Seibert, 123 Mo. 424, 24 S. W. 750, 27 S. W. 624, held that an appropriation for the support of the indigent insane in the asylum of the city of St. Louis who belonged to the state outside of the city was not unconstitutional even though such insane asylum was a private institution of such city and was not one of the state eleemosynary

institutions. So also public funds appropriated for the state and county system of schools. Likewise the expending of public funds in the construction of necessary public buildings and the construction and maintenance of public roads. On the other hand, there are many other enterprises helpful to the public in the community in which they are located, and that contribute very largely to the development and progress of the state, that are so purely private in their nature as not to admit of any doubt about the matter. Such, for example, are manufacturing or commercial enterprises established and maintained by private individuals or corporations for purely private gain.

"There are also many purposes for which public money may be appropriated from the use of which some persons derive more benefit than others, but this circumstance does not detract from the fact that their chief function is to administer to the public good, although the enjoyment and advantages derived from their maintenance are not distributed equally, even between members of the public who are situated alike or in the same class. If it were essential to the establishment or existence of an enterprise to be set up and sustained by public aid that all members of the public or all members of any class should derive from it the same or like benefits or advantages, then it would be entirely impossible to describe a public enterprise in aid of which public funds might be set apart."

This court, at the same page, also said:

"* * * * There is, of course, no difficulty in ruling that public funds cannot be appropriated for other than public purposes. About this there can be no dispute, and therefore, when a controversy such as comes up in this case arises, the only question to be considered is whether the purpose for which the money is to be appropriated is a public one within the meaning of the constitutional provisions."

So under this ruling if the funds appropriated by the City of Springfield are for a public purpose, then the appropriation is not in conflict with the provisions of the Constitution.

In the case of Jennings v. City of St. Louis et al., 58 S. W. (2d) 979, the Supreme Court en Banc held that an ordinance authorizing issuance of bonds to provide relief for people of the city who were unable to take care of themselves and to relieve them of their condition was an appropriation for a public purpose and within the provisions of the Constitution. In this case, at l. c. 980, the court said:

"While no hard and fast rule can be laid down as to whether or not an enactment of the Legislature is for a 'public purpose,' yet this court, in the case of State ex rel. v. Switzler, 143 Mo. 287, loc. cit. 317, 45 S. W. 245, 40 L. R. A. 280, 65 Am. St. Rep. 653, approved the test laid down by the Supreme Court of the United States, in the case of Citizens' Sav. & Loan Association v. Topeka, 20 Wall. 655, 665, 22 L. Ed. 455, wherein the court said: 'In deciding whether, in the given case, the object for which

the taxes are assessed falls upon the one side or the other of this line, they (the courts) must be governed mainly by the course and usage of the government, the objects for which taxes have been customarily and by long course of legislation levied, what objects or purposes have been considered necessary to the support and for the proper use of the government, whether state or municipal. Whatever lawfully pertains to this and is sanctioned by time and the acquiescence of the people may well be held to belong to the public use, and proper for the maintenance of good government, though this may not be the only criterion of rightful taxation.'

"An examination of the Revised Statutes of Missouri 1929 clearly shows that poor relief is a 'public purpose' and a governmental duty because by sections 12950 and 12952 (Mo. St. Ann. Sections 12950, 12952), counties are authorized to spend money in support of the poor; by section 9986 (Mo. St. Ann. Section 9986) a county pauper fund is provided; by section 12058 and 13942 (Mo. St. Ann. Sections 12058, 13942) county poor houses and county hospitals are maintained; section 9697 (Mo. St. Ann. Section 9697) gives authority to educate poor children that are blind or deaf; section 12961 (Mo. St. Ann. Section 12961) directs the county court to set aside, out of its annual revenues, a definite sum for the support of the poor; article 1, chapter 90 creates a state board of charities and defines its functions; section 12930 (Mo. St. Ann. Section 12930) requires this board to supervise public relief to the poor; sec-

tion 12938 (Mo. St. Ann. Section 12938) authorizes cities to provide for a social welfare board; section 7330 (Mo. St. Ann. Section 7330) gives cities under special charter, authority to maintain poor houses and charitable institutions. Also, various sections of these statutes give cities of the first, second, third, and fourth class power to provide funds to care for the poor. Section 1, article 1, paragraph 31, of the Charter of the City of St. Louis is as follows: 'To provide for the support, maintenance, and care of children and sick, aged, or insane poor persons and paupers.' Paragraph 32 authorizes the city: 'To provide and maintain charitable, educational, recreative, curative, corrective, detentive, or penal institutions, departments, functions, facilities, instrumentalities, conveniences, and services.'"

This same case cites a case passed on by the Supreme Court of Pennsylvania in Commonwealth v. Liveright, 308 Pa. 35, 161 A. 697, loc. cit. 710, wherein the court quoted the Pennsylvania Court as follows:

"We again hold that the support of the poor--meaning such persons as have been understood as coming within that class ever since the organization of the government, persons who are without means of support, the same persons stated in the * * * Bill * * *--is and has always been a direct charge on the body politic for its own preservation and protection; and that as such, in the light of an expense, stands exactly in the same position as the preservation of law and order. The expendi-

ture of money by the state for such purposes is in performance of a governmental function or duty, and is not controlled by the constitutional provision, if the purpose is to supply food and shelter to the poor, including those who are destitute because of enforced unemployment, provided only that the money be not administered through forbidden channels. * * * * *
To hold that the state may not under the Constitution now aid such people, even though it be a governmental duty, would be to deny to the state the right to perform, not only an important, but at this time a most pressing, governmental function. To hold that the state cannot or must not aid its poor would strip the state of a means of self-preservation, and might conceive untold hardships and difficulties for the future."

Under the foregoing authorities we do not think there is any question but that an appropriation of the city funds for the purpose of aiding the Federal Surplus Commodities Corporation to carry out the provisions of the Agricultural Adjustment Act by using surplus commodities and selling them to the people who are on relief at a reduced price would not be in violation of the foregoing constitutional provisions.

It seems from your letter that the question has been raised whether or not the city would be authorized to appropriate this money to the Federal Surplus Commodities Corporation as its agent for the relief of its citizens. We think the case of *State ex rel. v. Seibert*, 123 Mo. at 424, settles this question. In that case the Supreme Court en Banc held:

"An appropriation for the support of the indigent insane in the insane asylum of the city of St. Louis who belong to the state outside of the

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city, is not unconstitutional, though such insane asylum is a private institution of such city, and is not one of the state eleemosynary institutions."

This case, at l. c. 432, cited a Maryland case as authority for its views in which it said:

"It was held by the court of appeals of Maryland that the city of Baltimore could, by contract with private institutions, provide for the support of the foundlings, insane and other charitable objects of the city and appropriate the public money for that purpose. The court in that case says: 'If the city has not provided for such persons, or if they can be better taken care of and trained in those, or such institutions, than in the institutions of the city, we can perceive no good reason why the city may not contract for such care and training.' St. Mary's Industrial School v. Brown, 45 Md. 335."

CONCLUSION

From the foregoing it is the opinion of this department that a city of the second class may appropriate public funds for the purpose of creating a revolving fund to be used by the Federal Surplus Commodities Corporation in such city to carry out the provisions of the federal and state relief programs.

Respectfully submitted

APPROVED:

TYRE W. BURTON
Assistant Attorney General

COVELL R. HEWITT
(Acting) Attorney General

TWB:DA