

APPROPRIATIONS: Appropriation from Private Grain Inspection fund for six months period is not affected by Section 73 of House Bill 581.

October 10, 1941

Hon. Forrest Smith
State Auditor
Jefferson City, Missouri



Dear Mr. Smith:

This is in reply to your letter of recent date, wherein you request an opinion from this department on the following statement of facts:

"Section 73, House Bill 581, provides, 'All appropriations made under the provisions of House Bill 581 are subject to all prior appropriations made for State departments contained in this bill made by the 61st General Assembly, and in no event will the total appropriations of such departments exceed the amount set out in House Bill 581.'"

"Section 35, House Bill 66, makes an appropriation for the Grain and Warehouse Department, payable out of Private Inspection Fund. Also, Section 34 makes an appropriation for the same department payable out of Grain Inspection and Weighing Fund."

"House Bill 581 does not make an appropriation out of Private Inspection Fund for this department, but does provide for an appropriation out of the funds collected for weighing and inspection of grain, Section 46."

"As provided in Section 73, should the payments made under House Bill 66, Section 35, from Private Inspection Fund be charged under Section 46, House Bill 581?"

House Bill 66 found on page 73, Laws of Missouri, by Section 35 thereof, l.c. 94, makes an appropriation as follows:

"Grain and Warehouse Department Private Inspection Fund. -- There is hereby appropriated out of the State Treasury, chargeable

to the fund collected and received by the Warehouse Commissioner or his agents and employees on account of inspection and weighing grain in private warehouses, the sum of Nineteen Thousand Seven Hundred Ninety-seven Dollars (\$19,797.00) to pay the salaries, wages and per diem of the officers and employees and other expenses of the warehouse commissioner inspecting grain in private warehouses for the period beginning January 1, 1941, to June 30, 1941, as follows: * * * ."

House Bill 581, Laws of Missouri 194, page 181, by Section 46, l. c. 202, makes an appropriation as follows:

"Grain and Warehouse Department. -- There is hereby appropriated out of the State Treasury, chargeable to the fund into which the fees for the Weighing and Inspection of Grain are deposited, the sum of Four Hundred Fifty-one Thousand Five Hundred (\$451,500.00) Dollars to pay the salaries, wages and per diem of the officers and employees and other expense of the grain and warehouse commissioner, for the years 1941 and 1942, as follows: * * * ."

Section 73 of said House Bill 581, l. c. 219, reads as follows:

"Limitation of total expenditures. -- All appropriations made under the provisions of House Bill 581, are subject to all prior appropriations made for State Departments contained in this bill made by the 61st General Assembly and in no event will the total appropriation of such departments exceed the amount set out in House Bill 581."

The 61st General Assembly by House Bill 191, Laws of Missouri, 1941, page 343, amended the laws pertaining to grain and warehouses. Section 8 of this new act, pages 376 - 377, provides as follows:

"* * * All fees shall be turned into the State Treasury and set up as a special fund to the credit of the Grain Warehouse Fund, and all fees so turned into the State Treasury from services performed in accordance with the provisions of this act are hereby re-appropriated to the Department for the purpose of paying all salaries and expenses necessary for complying with the provisions of this act, and paying all other expenses incurred in the administration of the department. * * * * *"

Prior to the 1941 act, supra, provision was made for the inspection of private warehouses by Sections 14684 and 14685, R. S. Mo., 1939. These sections authorized the charge of an inspection fee. The fees which accrued from private inspections under these sections were kept in a separate account and the appropriation for private inspections heretofore has been made as was made in said Section 35 of House Bill 66, supra. Under the foregoing quoted provisions of Section 8 of said House Bill 191, all fees for inspection are to be placed in one account. This new act was approved August 7, 1941, and since it did not have an emergency clause does not go into effect until ninety days after the adjournment of the General Assembly. With the foregoing provisions of the act pertaining to the deposit of all inspection fees in this fund, it was not necessary for the General Assembly to make an appropriation out of private inspection funds for the balance of the biennium because the law pertaining to private inspection funds was replaced by the foregoing provisions of said House Bill 191.

Under Section 19 of Article 10 of the Constitution of Missouri, the appropriations under Section 35 of House Bill 66 would be in effect for a period of two years unless repealed by the General Assembly or unless the General Assembly provided for it to be in effect for a shorter period of time. In so far as this appropriation depends upon private inspection funds being deposited into its account, from which payments are to be made, we would say that since said House Bill 191 stops the deposit of private inspection funds into that account, the appropriation would be repealed when no further funds were available in the account. However, it will be noted that the appropriation under said House Bill 66 by Section 35 thereof, was only to cover the period beginning January 1, 1941 and ending June 30, 1941, so regardless of the provisions of House Bill 191, or of the provisions of Section 19 of Article 10 of

the Constitution of Missouri, this appropriation lapses on June 30, 1941. It is our understanding that funds from private inspections were placed in this account during the above period and warrants were drawn by virtue of the above appropriation.

As stated above, said House Bill 581, Laws of Missouri, 1941, page 181, does not contain a section similar to Section 35 of House Bill 66, supra, whereby funds are appropriated out of private inspection funds, but it does contain a section appropriating moneys out of funds into which the fees for the weighing and inspection of grain are deposited. Section 46, supra.

Section 34, Laws of Missouri, 1941, page 94, makes the following appropriation:

"Grain and Warehouse Department. -- There is hereby appropriated out of the State Treasury chargeable to the Grain Inspection and Weighing Fund, the sum of One Hundred Seven Thousand Six Hundred Twenty-five Dollars (\$107,625.00) to pay the salaries, wages and per diem of the officers and employees and other expense of the grain and warehouse commissioner, for the period beginning January 1, 1941 to June 30, 1941, as follows:
* * * *"

By this section funds are appropriated out of grain inspection and weighing funds for the six months period beginning January 1, 1941 and ending June 30, 1941. The language, excepting the amount, of subsection A for personal service, and Subsection D for operation, in said section 34, supra, reads the same as does the same subsection in Section 46, supra, intending to appropriate money from the grain and warehouse department for the remainder of the biennium. In other words, the appropriations under these two sections were for the same purpose, and of course there could be no question but that the provisions of said Section 73, supra, would apply to the appropriations under both sections.

Since there is no real appropriation from the private inspection funds in House Bill 581, then it would be seen that said Section 73, was not intended by the lawmakers to include the appropriation made from private inspection funds as set out in said Section 35 of House Bill 66, supra.

This is a rather peculiar situation and we do not find any case in this state which is authority upon which to base our view. However, we may use some rules of construction

which might be of aid in arriving at a conclusion here. One of these rules of construction is stated in State ex rel. McAllister v. Dunn, 277 Mo. 38, l. c. 45:

"* * * That the Legislature intended to accomplish something is not an unreasonable conclusion. That the statute should be construed to effect this, if on its face it is open to two reasonable constructions, is settled law. * * *"

Applying this rule here we must assume that the General Assembly, when they made the appropriation out of private inspection funds did not intend to do a useless thing, but if we were to construe the two appropriation acts so that by the provisions of said Section 73, no appropriation would be made under said Section 35, then we would be giving this statute a construction which would be that the Legislature did a useless thing. Another rule of construction which might be applicable here would be that repeals by implication are not favored and in order to effect such a repeal, it would have to be quite apparent that it was so intended. This rule is enacted in State ex inf. Major v. Amick, 247 Mo. 271, l. c. 289, where the Court said:

"If these two statutes are consistent and can stand together, then it is the duty of the court to harmonize rather than to hunt for conflict of statutory provisions in pari materia."

"In discussing this canon of statutory construction, the Supreme Court of the United States, in the case of Frost v. Wenie, 157 U. S. 58, used this language: 'It is well settled that repeals by implication are not favored. And where two statutes cover, in whole or in part, the same matter, and are not absolutely irreconcilable, the duty of the court -- no purpose to repeal being clearly expressed or indicated -- is, if possible, to give effect to both. In other words, it must not be supposed that the Legislature intended by a later statute to repeal a prior one on the same subject, unless the last statute is so broad in its terms and so clear and explicit in its words as to show that it was intended to cover the whole subject, and therefore, to displace the prior statute.'"

Applying this rule here under the provisions of Sections 73 and 46 of House Bill 581, we would hold that the payments made under Section 35 of House Bill 66 should be charged under Section 46 of House Bill 581, but we think such a holding would by implication repeal the appropriation made by the General Assembly under said Section 35, and be contrary to the rule enacted above.

CONCLUSION

From the foregoing it is the opinion of this department that the appropriation from the Private Grain Inspection fund made by Sec. 35 of House Bill 66 is not affected by House Bill 581 and especially Sec. 73 thereof, and that all claims chargeable to the Private Inspection fund should be paid out of and charged to the appropriation authorized by Sec. 35 of House Bill 66.

Respectfully submitted,

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APPROVED:

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