

APPROPRIATIONS:

GRAIN AND WAREHOUSE

DEPARTMENT:

EXECUTIVE DEPARTMENT:

Funds appropriated in 1941 to the Executive Department may not be used to pay operating expenses of Grain and Warehouse Department.

December 15, 1942

12-16



Honorable Forrest C. Donnell
Governor
Jefferson City, Missouri

Dear Governor Donnell:

We acknowledge your request of December 9, 1942, for an opinion. It is as follows:

"An appropriation found on page 203 of the Laws of Missouri 1941 reads in part as follows:

'D. Operation:

General Expense: including communication, printing and binding, transportation of things, travel within and without the State, other general expense (office rent and premium on bonds) and material and supplies: consisting of light, heat, water and power supplies, small tools, miscellaneous supplies and repairs, stationery and office supplies and special material and supplies...\$45,000.00'

"May certain operation expenses, incurred in the present biennium at a time when there were not sufficient funds to pay said expenses remaining in the above mentioned appropriation for the present biennium, of the Grain Warehouse Department be paid out of the appropriation found on page 125 of

the Laws of Missouri 1941, which appropriation reads in part as follows:

'D. Operation:

General expense consisting of communication, printing and binding, engraving, lithographing, travel within and without the State, of the Governor, his secretary, and such other employees as the Governor may deem necessary to make investigations and procure information, to enforce the laws and for any other proper expense, * * *"

Appropriation acts, as to the purpose for which the funds therein provided may be expended, are strictly construed, (State ex inf. Harvey v. Mo. Ath. Club, 261 Mo. 576, l. c. 598, 170 S. W. 904; Meyer v. Kansas City, 323 Mo. 200, l. c. 203, 18 S. W. (2d) 900), "and if any doubt arises out of the use of the words employed it is to be resolved in favor of the public and in limiting the expenditures of the appropriation to the express terms for which it was made." (Meyer v. Kansas City, supra.) In addition, funds appropriated for one purpose may not be used for a disconnected and unrelated purpose. State v. Thompson, 85 S. W. (2d) 594, 337 Mo. l. c. 340. In other respects, appropriation acts are apparently subject to the usual rules of statutory construction. State ex rel. v. Dierkes, 214 Mo. 578, l. c. 591, 113 S. W. 1081; State v. Weatherby, 344 Mo. 848, 129 S. W. (2d) 837.

Section 6 of Article V of the Constitution of Missouri provides:

"The Governor shall take care that the laws are distributed and faithfully executed; and he shall be a conservator of the peace throughout the State."

This duty pertains more to the criminal statutes and laws involving the peace and welfare of the State. The succeeding section of the Constitution authorizes the Governor to call out the militia to execute the laws, suppress insurrection and repel invasion.

It is difficult to visualize a direct connection between the constitutional provisions and the Grain and Warehouse Department, which now exists by virtue of the Laws of 1941 (pp. 373-396). The only provision of the Executive Appropriation act (Laws of 1941, p. 125) that bears upon the question is found in the words, "General expense * * * to enforce the laws and for any other proper expense, * * *." The term "and for any other proper expense" adds little to the act. These words refer to items of the same character before mentioned and do not broaden the terms preceding them. The rule of ejusdem generis applies to appropriation bills. State ex rel. v. Dierkes, 214 Mo. 578, 1. c. 591, 113 S. W. (2d) 1081.

It should be noted that the Grain and Warehouse Department appropriation is from the Weighing and Inspection of Grain Fund in the State Treasury (pp. 202-203, Laws of 1941), in keeping with Section 8 of the Grain and Warehouse Department Act (pp. 376-377, Laws of 1941.) On the other hand, the Executive appropriation mentioned is from the General Revenue Fund (pp. 124-125, Laws of 1941).

The question resembles the one decided in State v. Weatherby, 129 S. W. (2d) 887, 344 Mo. 848. The facts in that case were that an attorney was employed by the then Superintendent of Insurance and the then Attorney General as Special Counsel to represent them in certain actions involving the Insurance Laws. It was agreed that the attorney was to be paid out of appropriations made by the Legislature. He was paid partially from Insurance Department funds and partially from the Legal Department appropriation. The action was one to recover the amount paid from the Legal Department funds. The Legal Department appropriation, out of which the attorney was paid, came from "The State Revenue Fund," while the money paid him from the Insurance Department appropriation was chargeable "to the Insurance Department Fund," in keeping with the Insurance Code.

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In holding that the funds sued for were recoverable, the Supreme Court said (344 Mo. 1. c. 854):

"These appropriation acts evidence a clear legislative intent that the salaries, fees and expenses arising out of appointments issuing from the Insurance Department were to be chargeable against the Insurance Department fund in so far as therein provided; whereas those arising out of appointments under the Legal Department were to be paid out of the State revenues. While the General Assembly was vested with authority to change the fund chargeable with the payment of the controverted items, it did not see fit so to do. It follows that payments to one holding an appointive position under Section 5678, supra, as 'counsel' out of State revenue appropriated for the support of the Legal Department were without legislative sanction and unlawful. This is in conformity with the constitutional mandate found in Section 19 of Article 10."

We believe the above holding is decisive of the question submitted.

CONCLUSION

It is, therefore, concluded that certain operation expenses of the Grain and Warehouse Department incurred in the present biennium at a time when there were not sufficient funds to pay such expenses from the appropriation to the Grain and Warehouse Department may not be paid out of the appropriation to the Executive Department as set out on pages 124 and 125 of the Laws of Missouri for the year 1941.

Respectfully submitted

VANE C. THURLO
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APPROVED:

ROY MCKITTRICK
Attorney General