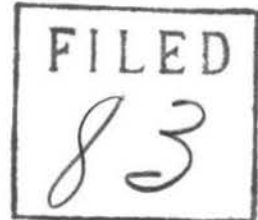


JUDICIAL COMMISSION: Appropriation by the Legislature necessary for the payment of the expenses of the judicial commissions.

November 13, 1942.

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Honorable Forrest Smith
State Auditor
Jefferson City, Missouri

Dear Mr. Smith:

This will acknowledge receipt of your letter of November 12, 1942, requesting an opinion of this Department. This opinion request, omitting caption and signature, is as follows:

"At the November 5, 1940 General Election, a Constitutional Amendment was adopted, providing for the nomination of persons for Appellate Judges.

"Section 5 of this Amendment found on page 725 of the 1941 Missouri Laws provides: 'Expenses - How Paid. All expenses incurred in administering this amendment, when approved by the Supreme Court of Missouri shall be paid out of the State Treasury. The Supreme Court shall certify such expenses to the State Auditor who shall draw his warrants therefor payable out of funds not otherwise appropriated.'

"I would like an opinion from your office as to whether I have authority to pay the expenses of this Commission in the absence of an appropriation duly passed by the legislature and signed by the Governor.

"Since it will be necessary for this commission to meet in the near future to make recommendations for a successor to Judge Hayes, I would appreciate an early reply."

As stated in your request above, on November 5, 1940, at the General Election a Constitutional Amendment was adopted providing for the nomination of persons for appellate judges. In such amendment there is a provision made for the forming of a Judicial Commission and the procedure for forming such Judicial Commission is found on page 724 of the Laws of Missouri for 1941. This Commission is given specific duties in the placing of men on the several courts in this State, and as a consequence of their meetings in the furtherance of their duties aforesaid there are certain expenses incurred in the administration of this Amendment. In Section 5 of such Amendment, which can be found at page 725, Laws of Missouri, 1941, and which you have cited in your request, provides that all of the expenses incurred in the manner stated above shall be paid out of the State Treasury but before such expenses can be paid it is necessary that they shall be certified by the Supreme Court to the State Auditor "who shall draw his warrants therefor payable out of the funds not otherwise appropriated."

Section 19 of Article X of the Constitution of Missouri, in dealing with the payment of moneys out of the Treasury of the State of Missouri, provides as follows:

"No moneys shall ever be paid out of the treasury of this State, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made, or a warrant shall have issued therefor, within two years after the passage of such appropriation act; and 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. A regular statement and account of the receipts and expenditures of all public money shall be published from time to time."

It can be seen that this section of the Constitution provides that no moneys can be paid from the Treasury of the

State of Missouri unless there is an appropriation made for the purpose for which the money is to be paid. However, the Constitutional Amendment which deals with the Judicial Commission, and consequently the section thereof which provides for the payment of the expenses of such Commission, has now become a part of the Constitution of the State of Missouri. Under the provisions of Section 5 aforesaid, it might be contended that such provision is an appropriation act in the Constitution for the payment of expenses incurred by the Judicial Commission. If this point of view was correct there would be no violation of Section 19, Article X, since there would be an appropriation made for the payment of these expenses. Appropriations by the Constitution have been approved of in certain cases in the State of Missouri; notably in the case of State ex rel. Publishing Company v. Hackmann, 314 Mo. 33, 282 S. W. 1007, in which it was held that an appropriation by the Constitution itself was permissible. However, in the recent case of Hunt C. Moore v. Dwight H. Brown, Secretary of State, decided by the Supreme Court (not yet reported), and which was the case involving the "old age" amendment to the Constitution of Missouri, the Supreme Court held that a constitutional appropriation was illegal.

Therefore, in view of the conflict of the decisions at the present time we feel that an appropriation should be made by the Legislature and signed by the Governor. Another item that should be considered is that it might be possible that at some future time, if it is not a fact now, more money will be appropriated by the Legislature than is collected and placed in the Treasury of the State of Missouri. If such should be the case and there are expenses incurred by the Judicial Commission, there could be no payment made on account of such expenses because there would be no "funds not otherwise appropriated."

Conclusion

Therefore, it is the opinion of this Department that the proper way to meet the situation set out in your request, since we have an apparent conflict of the decisions on the matter of constitutional appropriations and also that at sometime more money may be appropriated than there is money in the Treasury,

Hon. Forrest Smith

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would be for the Legislature to make an appropriation to be signed by the Governor, for the purpose of paying the expenses of the Judicial Commission.

Respectfully submitted,

JOHN S. PHILLIPS
Assistant Attorney-General

APPROVED:

ROY MCKITTRICK
Attorney-General

JSP:EG