

APPROPRIATIONS: Section 6, H. B. 657, Laws of 1943, page 278, in providing funds for relief of sheriffs who incurred expense without Governor's warrant is invalid.

June 21, 1944



Honorable Forrest C. Donnell
Governor of Missouri
Jefferson City, Missouri

Dear Governor Donnell:

Your letter of June 10th, 1944, is as follows:

"Section 6 of H. B. 657 of the Sixty-second General Assembly (Laws of Missouri of 1943, page 278) appropriates out of the State Treasury, chargeable to the General Revenue Fund, designated sums for the relief of certain sheriffs, officers and persons and institutions for apprehension of criminals.

"Your opinion is respectfully requested on the following question:

Should the State Auditor issue warrants for the payment of those amounts, included in the appropriation in said Section 6, which are for payment of expenses incurred by sheriffs of Missouri who, without first having been appointed agents by the Governor of Missouri, left the State to return to Missouri certain alleged fugitives of Missouri?"

It is said in State ex rel. Kelly v. Hackmann, 275 Mo. 636, 205 S. W. 161, in a dissenting opinion, at page 654 (Mo.):

"* * * that no appropriation act under our system of laws derives any operative force from its own terms alone. * * *

something more is necessary to authorize the withdrawal of funds from the public treasury than a mere arbitrary declaration of the General Assembly for that purpose. * * * * *

That such is the established rule in Missouri is made certain by the rule laid down in State ex rel. Bybee v. Hackmann, 276 Mo. 110, 207 S. W. 64, where the point for decision was whether funds appropriated to cover stenographic services might be paid out if the agency incurring the obligation had no authority to employ stenographers. The Court ruled the case under the principle that (l. c. Mo. 116):

"* * * no officer in this State can pay out the money of the State except pursuant to statutory authority authorizing and warranting such payment. * * *"

In State ex rel. Bradshaw v. Hackmann, 276 Mo. 600, 208 S. W. 445, the point for decision was whether funds appropriated to pay for traveling expenses could be used to pay for travel expense incurred in traveling outside the state when the officer who incurred such expense was not authorized by law to travel outside the state. The Court denied the claim quoting at l. c. Mo. 607 for its authority the above quoted excerpt from the Bybee case.

The appropriation in question purports to provide the necessary money to pay sheriffs who went to other states without the warrant of the Governor to return to Missouri persons charged with violating the laws of this state. No sheriff, or other officer of the State of Missouri, has any legal authority to do this. The method whereby these fugitives from justice are to be returned is prescribed in 18 U.S.C.A. 662, and Section 3976, et seq., R. S. Mo. 1939. None of the provisions referred to authorize the sheriff, as such, to go beyond the boundaries of the state to return a fugitive from justice. Only the messenger of the Governor who has the Governor's warrant is authorized to do this. It therefore appears that no substantive law authorized the sheriff to incur these obligations and that being so an appropriation to pay them is invalid.

CONCLUSION

It therefore is our opinion that the Auditor may not issue his warrants on the funds appropriated in Section 6 of House Bill 657, Laws of Missouri, 1943, page 278, to compensate sheriffs for their expenses and fees in returning fugitives from justice to this state when the expenses and fees were incurred at a time when the sheriffs did not have warrants from the Governor, and had not been designated as messengers of the Governor to serve such warrants.

Respectfully submitted,

LAWRENCE L. BRADLEY
Assistant Attorney General

APPROVED:

ROY MCKITTRICK
Attorney General

LLB:CP