

APPROPRIATION: Section 13051, R. S. Mo. 1939, is not  
CONSTITUTION : in conflict with Section 43, Article IV,  
and is therefore constitutional.

February 21, 1945



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Honorable R. J. King, Jr.,  
Chairman, Appropriations Committee,  
Missouri House of Representatives,  
Jefferson City, Missouri.

Dear Sir:

This will acknowledge receipt of your letter of February 14, requesting an official opinion from this department, which reads:

"In drawing up Appropriation Bills for State Institutions, I am confronted with a problem arising out of Section 13051, R.S. Mo., 1939.

"I would like an opinion as to whether or not such Section is constitutional under the provisions of Section 43, Article IV of the Constitution."

Section 13051, Revised Statutes of Missouri 1939, reads:

"All fees, funds and moneys from whatsoever source received by any department, board, bureau, commission, institution, official or agency of the state government by virtue of any law or rule or regulation made in accordance with any law, shall, by the official authorized to receive same, and at stated intervals, be placed in the state treasury to the credit of the particular purpose or fund for which collected, and shall be subject to appropriation by the General Assembly for the particular purpose or fund for which collected during the biennium in which collected and appropriated. The unexpended balance remaining in all such funds (except such unexpended balance as may

remain in any fund authorized, collected and expended by virtue of the provisions of the Constitution of this State), shall at the end of the biennium and after all warrants on same have been discharged and the appropriation thereof has lapsed, be transferred and placed to the credit of the ordinary revenue fund of the state by the state treasurer. Any official or other person who shall willfully fail to comply with any of the provisions of this section, and any person who shall willfully violate any provision hereof, shall be deemed guilty of a misdemeanor; Provided, that in the case of state educational institutions there is excepted herefrom, gifts or trust funds, from whatever source; appropriations, gifts or grants from the Federal Government, private organizations and individuals; funds for or from student activities, farm or housing activities, and other funds from which the whole or some part thereof may be liable to be repaid to the person contributing the same, and hospital fees; all of which excepted funds shall be reported in detail quarterly to the Governor and biennially to the General Assembly."

Section 43, Article IV of the Constitution of Missouri reads;

"All revenue collected and moneys received by the State from any source whatsoever shall go into the treasury, and the General Assembly shall have no power to divert the same, or to permit money to be drawn from the treasury, except in pursuance of regular appropriations made by law. All appropriations of money by the successive General Assemblies shall be made in the following order:

First, For the payment of all interest upon the bonded debt of the State that may become due during the term for which each General Assembly is elected.

Second, For the benefit of the sinking fund, which shall not be less annually than two hundred and fifty thousand dollars.

Third, For free public school purposes.

Fourth, For the payment of the cost of

assessing and collecting the revenue.

Fifth, For the payment of the civil list.

Sixth, For the support of the eleemosynary institutions of the State.

Seventh, For the pay of the General Assembly, and such other purposes not herein prohibited as it may deem necessary; but no General Assembly shall have power to make any appropriation of money for any purpose whatsoever, until the respective sums necessary for the purposes in this section specified have been set apart and appropriated, or to give priority in its action to a succeeding over a preceding item as above enumerated."

No court has ever construed Section 13051, supra. At first blush it appears as if Section 43, supra, intended to include not only revenue but all other moneys received from any source whatsoever, however this is not true.

It is well established that there is a presumption in favor of the constitutionality of legislative enactment, and that courts in construing statutes as to their constitutionality will construe every intendment in favor of its validity and that it must be presumed to be constitutional unless it clearly appears to be repugnant to the Constitution. Volume 11, Section 128 of American Jurisprudence, page 776, reads:

"The basic principle which underlies the entire field of legal concepts pertaining to the validity of legislation is that by enactment of legislation, a constitutional measure is presumed to be created. In every case where a question is raised as to the constitutionality of an act, the court employs this doctrine in scrutinizing the terms of the law. In a great volume of cases the courts have enunciated the fundamental rule that there is a presumption in favor of the constitutionality of a legislative enactment. \* \* \* \*"

In State ex inf. v. Merchants Exchange, 269 Mo. 346, l.c. 356, the Supreme Court of the State of Missouri also expressed this same rule. In so holding the court said:

"We shall not discuss the fundamentals in statutory construction, when the

validity of a statute is at stake. It goes without the saying that there is a legal presumption of validity; that if there is doubt as to the constitutionality of the law the doubt shall be resolved in favor of the validity of the legislative act; that the expediency or in expediency of the act is not for the courts; that in Missouri the power of the Legislature to enact laws has no limitation, except the express limitations in the State and Federal Constitutions; that the legislative power under the police powers of the State is very broad."

Prior to the enactment of Section 13051, supra, by the 57th General Assembly, many fees collected by some boards could be expended by said boards without the necessity of an appropriation by the Legislature. The courts held this was true by reason that it did not constitute state revenue and that the Legislature had created such boards and they were self-supporting. See Ex parte Daniel Lucas, 160 Mo. 218. In that case there was a law in effect providing that each member of the Barber Board should receive \$3.00 per day for services rendered and also an allowance for necessary traveling expenses, which should be paid out of any money in the hands of the treasurer of the board. It was contended that such provision conflicted with the provision of Section 43, Article IV of the Constitution. In overruling this contention the court said:

"The fourth contention is not well founded for the simple reason that section 43 of article 4, applies only to money provided for and received by the State. The money authorized to be collected under this act is not State revenue, but is simply a provision to make the board of examiners self-supporting."

In view of the foregoing citation from Ex parte Lucas it is quite apparent to the writer that the court in construing Section 43, Article IV of the Missouri Constitution, thought such fees received by the Barber Board did not come within that provision, which reads in part:

"All revenue collected and moneys received by the State from any source whatsoever \* \* \* \* ."

Since the enactment of Section 13051, supra, such fees may no longer be expended without an appropriation by the Legislature. The Legislature can only pass laws that are not prohibited by the State and Federal Constitution. In Volume 11 of American Jurisprudence, page 801, Section 135 in part reads:

" \* \* \* \* The only test of the validity of an act regularly passed by a state legislature is whether it violates any of the express or implied restrictions of the state or Federal Constitutions, and all acts of the legislature are valid unless they so conflict. \* \* \* \* "

In the same Volume, page 894, Section 193, we find the following principle of law:

"In accordance with the doctrine that the state Constitution is not a grant of power, but only a limitation, as far as the legislature is concerned, it is a recognized principle of constitutional law that except where limitations have been imposed by the Federal or state Constitution, the power of a state legislature is unlimited and practically absolute, and that, therefore, it covers the whole range of legitimate legislation."

There is an exception contained in Section 13051, supra, which reads:

" \* \* \* (except such unexpended balance as may remain in any fund authorized, collected and expended by virtue of the provisions of the Constitution of this State) \* \* \* ."

We construe this to mean that the General Assembly cannot enact legislation that will defeat the provisions of any constitutional amendment. There are certain appropriations made by the Legislature against funds deposited in the State Treasury, which funds were created by some constitutional amendment, and the money in said funds under said amendment cannot be spent for any other purpose or by any one else except as provided in the amendment. We refer to such amendments as the one creating the Conservation Commission fund in Section 16, Article XIV of the Missouri Constitution, and

the amendment pertaining to the State Highway Commission. So that accounts for the foregoing exception in Section 13051.

In the same statute, 13051, supra, we also find a proviso which provides that such moneys received under said proviso are excepted from the provisions of Section 13051, and which reads as follows:

" \* \* \* Provided, that in the case of state educational institutions there is excepted herefrom, gifts or trust funds from whatever source; appropriations, gifts or grants from the Federal Government, private organizations and individuals; funds for or from student activities, farm or housing activities, and other funds from which the whole or some part thereof may be liable to be repaid to the person contributing the same, and hospital fees; all of which excepted funds shall be reported in detail quarterly to the Governor and biennially to the General Assembly."

From a careful examination of the foregoing exceptions we are of the opinion that any moneys received under the foregoing proviso do not constitute revenue collected and moneys received by the State from any source whatsoever, as provided in Section 43, Article IV of the Constitution of Missouri.

In State ex rel. L. D. Thompson, State Treasurer, v. Board of Regents of Northeast Missouri Teacher's College, 305 Mo. 57, the court held that neither Section 43, Article IV, nor Section 15, Article X of the Missouri Constitution, required the board to pay into the treasury insurance money received on policies issued to the board and paid for by tuition fees, in settlement of losses sustained when the college building was destroyed by fire, and that the board can use such insurance money to restore said building. The court further held that there was no statute classifying this money as "state moneys"; that the statute required an annual report of money received from appropriations, incidental fees and other sources, and the distribution thereof, implying that the board could receive and disburse, without placing in the State treasury, money received from the insurance company; that a statutory enactment was a prerequisite to such payment and its receipt and deposit by the treasurer to entitle it, under the Constitution, to be classified as state money. In so holding the court said:

"The constitutional provision invoked by relator as the underlying authority

for the issuance of this writ is but one of the many restrictions to be found in the Constitution of 1875 concerning the custody and expenditure of the revenue. The moving cause for the incorporation of these restrictions in the Constitution was to put an end to an era of extravagance and waste in the use of the revenue which had prevailed for more than a decade prior thereto - the Constitution of 1865 containing no such limitation as is found in the provision under consideration. This provision, it will be seen from its terms, which are wisely chosen as a limitation upon power, is restricted to 'revenue collected and money received by the State from any source whatsoever.' By revenue, whether its meaning be measured by the general or the legal lexicographer, is meant the current income of the State from whatsoever source derived which is subject to appropriation for public uses. This current income may be derived from various sources as our numerous statutes attest, but no matter from what source derived, if required to be paid into the Treasury, it becomes revenue or state money; its classification as such being dependent upon specific legislative enactment or, as aptly put by the respondent, state money means money the State, in its sovereign capacity, is authorized to receive - the source of its authority being the Legislature. With this limitation - and the Constitution itself is but an instrument of limitations - it should be strictly construed. Thus construed the spirit which prompted the adoption of the provision is fully recognized and its purpose is promoted. Unless, therefore, it can be successfully contended in harmony with well recognized rules of interpretation that the Board of Regents of the College is the State and that moneys received by it other than from appropriations is state money, the constitutional provision will afford no support to the relator's contention." (Underscoring ours.)

In the foregoing case the fire insurance policy was purchased by the Board of Regents of the Northeast Missouri Teacher's College out of certain student's fees paid to the board.

Honorable W. J. King, Jr.

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In view of the foregoing authority, unquestionably funds from student activities, hospital fees, gifts and trust funds for state educational institutions, and gifts and grants from the Federal Government do not constitute revenue collected and money received by the State, as provided in Section 43, Article IV of the Constitution of Missouri.

Therefore, it is the opinion of this department that, since there is no conflict between Section 13051, Revised Statutes of Missouri 1939, and Section 43, Article IV of the Constitution of the State of Missouri, and in view of the fact that the presumption is in favor of the constitutionality of any enactment, unless it clearly appears to be repugnant to the Constitution, Section 13051, supra, is constitutional.

Respectfully submitted,

AUBREY R. HAMMETT, JR.  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

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