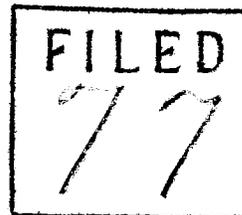


COUNTY COURT

Grant by the County Court of one thousand (\$1,000) dollars or more to the American Legion Post of Vienna, Missouri, for the erection of a building in which to hold American Legion meetings.

September 12, 1945



Honorable Hamp Rothwell
Prosecuting Attorney
Marion County
Vienna, Missouri

Dear Mr. Rothwell:

In your letter of August 27, 1945, you request an opinion of this Department, which letter reads as follows:

"The American Legion Post of Vienna wants the County Court to grant (give) one thousand dollars or such sum as the Court sees fit to erect a building in Vienna for the purpose of holding meetings of the American Legion, entertainments etc.

"I am unable to find any authority for such a grant or gift and it seems like Sec. 25, page 48, of the new constitution, prohibits the county from doing such things. Will you please let me have your opinion on this by next Tuesday, September 4th?

"Do you know of any authority for the State of Missouri to make such a grant or gift in any amount? Some of the members here tell me that the State has done that in several counties. If so, it is all news to me."

We think the determination of this matter turns upon the provisions of the Constitution of 1945, relating to the grant of public money to corporations, associations or individuals. Section 23 of Article VI of the Constitution of 1945, reads as follows:

"No county, city or other political corporation or subdivision of the state shall own or subscribe for stock in any corporation or association, or lend its credit or grant public money or thing of value to or in aid of any corporation, association or individual, except as provided in this Constitution."

Section 25 of the Constitution of 1945, reads as follows: (Section 25 of Article VI)

"No county, city or other political corporation or subdivision of the state shall be authorized to lend its credit or grant public money or property to any private individual, association or corporation, except that the general assembly may authorize any municipality to provide for the pensioning of the salaried members of its organized police force or fire department and the widows and minor children of the deceased members, and may authorize any city of more than 100,000 inhabitants to provide for the pensioning of other employees, and may also authorize payments from any public funds into a fund or funds for paying benefits upon retirement, disability or death to persons employed and paid out of any public fund for educational services, and to their beneficiaries or estates."

At the outset, it will be well to note that the grant of public money by the County Court for the purpose stated in your letter, does not fall within any of the exceptions set out in Section 25 of the Constitution of 1945.

There being no cases to date which have interpreted these sections of the New Constitution, we must look to the decisions interpreting the similar provisions of the Constitution of 1875, since the Constitutional Convention must be considered to have been aware of the interpretations placed upon those sections by the Courts. State ex rel. vs. St. Louis, (1909), 216 Mo. 47. These sections were Sections 46 and 47 of Article IV of the Constitution of 1875. It is sufficient to state that the provisions of these sections, in

regard to their pertinency in regard to the matter before us, are identical with the provisions of the New Constitution above quoted.

The cases of these sections of the old Constitution reveal the fact that these provisions have been strictly construed, and that public monies cannot be granted to individuals, associations, or corporations unless for a public purpose. State ex rel. vs. Hostetter (1937), 340 Mo. 1155, 104 S.W. (2d) 670; State vs. Gordon (1914), 261 Mo. 631; State ex rel. Hackmann (1918), 275 Mo. 636; State vs. Seibert (1894), 123 Mo. 429; State vs. Board of Trustees (1915), 192 Mo. App. 583; State vs. St. Louis, supra.

There is no question but that the monies herein involved are public monies, since they are to be drawn from the treasury of the County. (State vs. Hostetter, supra). Furthermore, the grant of the money, as indicated by your letter, will be a gratuitous payment, and this is the type of grant to which the constitutional provision applies. (State vs. Hackmann, supra).

The remaining question is, whether a grant to the American Legion for the purpose stated, could be considered a grant for a public purpose. Several cases have discussed this question, and have defined "public purpose". Public monies must be disbursed only for public burdens or purposes. (State vs. Seibert, supra). Public monies must not be disbursed to private individuals for something wholly disassociated with the interests of the public itself. (State vs. Board of Trustees, supra). A public purpose is one governmental in character. (State vs. Gordon, supra). In Kennedy vs. City of Nevada (1925), 222 Mo. App. 459, the Court, in holding that a grant was not for a public purpose, considered it very important that only one class of the population would be able to use the tourist camp, the land for which was to be purchased by a public grant. Whether a thing is for a public purpose is to be determined by custom and usage, i.e., whether it is customarily thought of as a purpose which is public in nature. (State vs. O'Rear, 277 Mo. 320 (1918)).

The public grant herein involved, does not fall within a meaning of "public purpose" as defined by these cases. The County, or for that matter, any political subdivision, does not have the burden of providing a meeting place for special groups of citizens whether organized or not. Such matters are to be taken care of by the citizens themselves, and the political subdivision of the Government

has never been considered to have the burden of providing facilities for such purposes. The provision for a meeting place for the American Legion or any other group of private citizens is, we think, wholly disassociated from the interest of the public itself. While in the broad sense, the public may derive some benefit from the activities of the American Legion, it cannot be said that this incidental benefit places the matter of a meeting place for a group of private citizens in the category of a public interest. The public may derive incidental benefits in many similar cases, but this has never been considered enough to place upon the political subdivision of providing any aid to such group of citizens. The activities of the American Legion are not governmental in character, but partake of the nature of civilian activity solely. Strictly speaking, only one class or group of citizens will be benefited by the grant herein involved, that being the members of the American Legion. Custom and usage do not sanction such a grant, since providing for a meeting place for the American Legion or any other civilian group, has never been considered by the people as something which is, or should be, done by the county or political subdivision. Such matters have always been arranged, and carried out by the members of the American Legion, or other groups themselves.

In State ex rel. vs. St. Louis, 216 Mo. 47 (1908), the Supreme Court had before it the question of whether a building could be erected in Forrest Park, St. Louis, Missouri, for the purpose of an art museum. The City ordinance of St. Louis, authorized the erection of such a building for the purpose of art education. The Board of Control of the St. Louis School and Museum of Fine Arts, a department of Washington University, was, by the ordinance, authorized to erect such a city building. The Supreme Court of Missouri held that the grant of public money for such a purpose was void as violative of the constitutional prohibition (Sections 46 and 47 of Article IV of the Constitution of 1875), against the granting of public money or thing of value in aid of or to any individual, association or corporation, or to make any appropriation or donation to, or in aid of, any corporation or association.

In that case, it was argued that the museum funds were for a public purpose, since the building was to be opened to the public at certain times, and further, would be an important addition to the City as a whole. In spite of this contention, the Court in that case, l.c. 95, said:

"* * * In our opinion this was an attempt to require the city of St. Louis and its taxpayers to donate this art museum tax to the support of a department of Washington University, a private corporation, and,

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in our opinion, to that extent the act was clearly within the prohibitions of the Constitution already noted, and therefore void."

We think that the grant of money by the City in the above case more nearly partakes of the nature of a public purpose than would the grant of money by the County under the facts herein involved in the instant case. Yet, the Supreme Court in that case held such a grant void as violative of the constitutional provisions of the Constitution of 1875, similar to those found in the Constitution of 1945.

CONCLUSION.

It is, therefore, the opinion of this Department that the grant of one thousand (\$1,000) dollars, or more, by the county Court of Maries County, to the American Legion Post of Vienna, Missouri, for the purpose of erecting a building in which to hold meetings and entertainments of the American Legion, would be in violation of Sections 23 and 25 of Article VI of the Constitution of 1945.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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