

HIGHWAY DEPARTMENT: The legislature may regulate the Highway Department in any way which is not inconsistent with the limitations imposed upon the legislature by the constitutional provisions of the state or nation.

August, 13, 1946



Honorable Daniel O'Bryan,
Representative
House of Representatives
Jefferson City, Missouri

Dear Mr. O'Bryan:

In your recent request for an opinion you asked the following questions:

"Will you please advise me of the meaning of Section 30, Article 4, 1945 Constitution of Missouri, wherein is stated ".....Shall be credited to a special fund and stand appropriated without legislative action for the following purposes, and no other:.."

"The meaning of this clause has always bothered me. Does it mean that the Highway Department is independent of the legislature, or just what does it mean? I am a member of the Appropriation Committee and would like to have this matter clarified.

"I understand that there has been no audit of the Highway Department. Has the legislature no inherent power to regulate this department?"

"I would appreciate it if you would inform me fully on this matter."

In your letter you quoted a portion of Section 30, Article IV of the Constitution of 1945, and then asked the following two questions:

- (1) "Does it mean that the Highway Department is independent of the legislature, or just what does it mean?"
- (2) "Has the legislature no inherent power to regulate this department?"

The nature of these questions is so similar that an answer to one will be an answer to the other.

Section 30, Article IV, Missouri Constitution for 1945, provides, in part, as follows:

"Sec. 30. Source and Application of Highway Funds.--For the purpose of constructing and maintaining an adequate system of connected state highways all state revenue derived from highway users as an incident to their use or right to use the highways of the state, including all state license fees and taxes upon motor vehicles, trailers, and motor vehicle fuels, and upon, with respect to, or on the privilege of the manufacture, receipt, storage, distribution, sale or use thereof (excepting the sales tax on motor vehicles and trailers, and all property taxes,) less the cost, (1) of collection thereof, (2) of maintaining the commission, (3) of maintaining the highway department, (4) of any workmen's compensation, (5) of the share of the highway department in any retirement program for state employees as may be provided by law, (6) and of administering and enforcing any state motor vehicle laws or traffic regulations, shall be credited to a special fund and stand appropriated without legislative action for the following purposes, and no other: * * *"

In Volume 7, Missouri Digest, under "Constitutional Law", Key 13, the following rules are found:

"Where the meaning of the Constitution is plain and unequivocal, and its intent clear and unmistakable, the courts have nothing to do with the policy of the rule established, but must accept the spirit of the rule as well as its letter, and enforce it as if they believed in its wisdom.--McGrew v. Missouri Pac. Ry.Co., 132 S. W. 1076, 230 Mo. 496; Id., 166 S. W. 1033, 258 Mo. 23.

"In construing provisions of Constitution intent of instrument is paramount.--State ex rel. Harry L. Hussmann Refrigerator & Supply Co. v. City of St. Louis, 5 S. W. (2d) 1080, 319 Mo. 497, followed in State ex rel. Rosebrough Monument Co. v. Same, 11 S. W. (2d) 1010."

As to the meaning of the language used in the constitution by the framers, the judiciary has laid down the following rule for guidance in interpretation. The general rule is announced as follows:

"In construing the language of a constitution, the words used, unless they are technical, are to be understood in their usual and ordinary sense.--(1912) State ex rel. Barrett v. Hitchcock, 146 S. W. 40, 241 Mo. 433; (1915) State ex rel. and to Use of Buck v. St. Louis & S. F. R. Co., 174 S. W. 64, 263 Mo. 689."

Applying those two rules to the above quoted section of the constitution it is apparent, as stated in the constitutional provision quoted supra, that a special fund is set up over which there is no legislative control as to the appropriation of said fund; and in addition the said constitutional provision provides its own limitation that the fund is to be used for stated purposes and no others. Furthermore, said constitutional provision specifically provides for the sources of said fund. Read with the intent found in the provision, and giving the language its ordinary meaning as is required by the judicial decisions, there should be no confusion to what the provision provides for. It may be that there is some confusion because of Section 36, Article III, of the Constitution for 1945, which requires that:

"Limitation of Withdrawals to Appropriations--
Order of Appropriations.--All revenue collected and moneys received by the state shall go into the treasury and the general assembly shall have no power to divert the same or to permit the withdrawal of money from the treasury, except in pursuance of appropriations made by law. All appropriations of money by successive general assemblies shall be made in the following order:
* * * *"

The distinction, however, is that the fund, under Section 30, Article IV of the Constitution of 1945, is a special and distinct fund and is outside the legislative power to control.

Answering your two questions stated above, it is necessary to construe the constitution as to whether or not it is a grant or limitation of powers. Affirmative decisions of this state, holding that the state constitution is not a grant of power, but is a limitation on the legislative power, can be found in Volume 7, Missouri Digest, Section 26, in which the specific statement of the rule is found:

"A state constitution is not a grant but a limitation on legislative power, so that the Legislature may enact any law not expressly or inferentially prohibited by the Constitution of the state or nation.--(1901) *Ex parte Roberts*, 65 S. W. 726, 166 Mo. 207; (1905) *State ex rel. Henson v. Sheppard*, 91 S. W. 477, 192 Mo. 497; (1910) *McGrew v. Missouri Pac. Ry. Co.*, 132 S. W. 1076, 230 Mo. 496; *Id.*, 166 S. W. 1033, 258 Mo. 23; (1912) *Harris v. William R. Compton Bond & Mortgage Co.*, 149 S. W. 603, 244 Mo. 664; (1913) *State v. St. Louis, I. M. & S. Ry. Co.*, 162 S. W. 144, 253 Mo. 642; (1916) *State ex rel. Moberly Special Road Dist. v. Burton*, 182 S. W. 746, 266 Mo. 711; *State ex rel. Columbia Special Road Dist. v. Johnson*, 182 S. W. 750; *Williams v. United States Express Co.*, 184 S. W. 1146; (1917) *State ex rel. Rhodes v. Public Service Commission of Missouri*, 194 S. W. 287, 270 Mo. 547; (1918) *Ludlow-Saylor Wire Co. v. Woolbrink*, 205 S. W. 196, 275 Mo. 339."

In other words, the legislature may regulate the Highway Department in any way that is not prohibited, either expressly or by inference, by the Constitution of the State of Missouri or the nation.

Applying that rule to Section 30, Article IV, the legislature shall have no power to destroy said "special fund" created by said section of the Constitution, or require that there be a legislative enactment for the appropriation out of said fund, but legislative enactments may be applied to the fund not inconsistent with the constitutional limitations.

Further illustrations of the limitations imposed upon the Legislature as to regulating the Highway department may be found in the annotations of Section 44a, Art. 4, of the Constitution of 1875, which section is in substance like the one under consideration. There specific cases note the extent of the Legislature's powers. Section 44a, Article 4, was an amendment to Section 44, and was adopted November 6, 1923. A case of especial interest was *State ex rel. McKinley Pub. Co. v. Hackmann*, 232 S. W. 1007, 314 Mo. 33, wherein the Court held:

"This section, (section 44, Art. 4) before 1928 amendment, held not to appropriate without legislative action money to pay maintenance expense of state highway commission." (insert ours).

That express recognition by the Court in the Hackmann case, supra, that the Constitution may make provision for the appropriation of funds that do not come under the Legislature's control is evident. However, the power arose by virtue of an amendment and did not come by reason of Section 44 alone. As in the present section, Section 30, Article IV, Constitution of 1945, the provision for the appropriation of funds without Legislative control is provided for. With this limitation upon the Legislature, the Legislature cannot require that the funds be disbursed only with their permission or authority. It is a matter for the Highway Commission to determine.

Further, we would like to point out, in the Hackmann case, supra, that the court, in analysing Article IV, Section 44A, Constitution of 1875, pointed out that the Highway Commission is to be maintained from public or state revenues. At l. c. 10011, the court said:

"The money out of which the highway commission is to be maintained is as much public or state revenue as any money coming into the state treasury from any source. Whether it is called motor vehicle registration fees, license fees, or a tax (all of which designations are used in section 44a of article 4 of the Constitution, vide Laws 1921, 1st Ex. Sess. p. 195), or by any other name, it is a tax levied by the state upon the right of motor vehicles to use the public streets and highways of the state. It is not only levied by the state, but is collected by it, and paid directly from the motor vehicle owners into the state treasury (Laws 1921, 1st Ex. Sess. p. 104, S. 23). The state, therefore, is interested in what use is made of revenue from that source. So much is it interested that the people, in amending the Constitution (section 44a of article 4, supra), declared

that all such taxes received by the state, less the costs of maintaining the state highway commission, should stand appropriated without legislative action for and to the payment of the principal and interest of certain state bonds and the accumulation of a sinking fund therefor. To say, therefore, that the state is not interested, and vitally interested, in the amount to be taken from this fund for the maintenance of the highway commission is not in accord with the people's action in amending the Constitution and that of the Legislature in creating the commission."

A reading of Section 30, Article IV, of the Constitution of 1945, will disclose that the same situation exists today in relation to the Highway Commission as existed at the time of the Hackmann case. In other words, Section 30 sets up a special fund for particular purposes which may be appropriated without legislative action. Funds for all other purposes are subject to legislative action. Under Article IV, Section 30 (2) it is provided that the maintaining of the Highway Commission is a purpose other than those purposes particularly enumerated whose funds are not subject to legislative appropriation.

CONCLUSION

Therefore, it is the opinion of this department, that the legislature may regulate the Highway Department in any way which is not inconsistent with the limitations imposed upon the legislature by the Constitutional provisions of the state or nation.

Respectfully submitted,

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