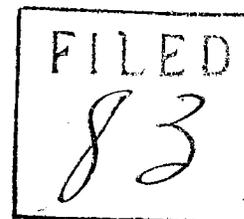


APPROPRIATIONS:

LIBRARY ADVISORY BOARD:

Appropriation to Library Advisory Board under head "Personal Service" for "salaries, wages and per diem of employees" does not include pay for travel and subsistence of such employees.

April 15, 1947



Honorable Forrest Smith
State Auditor
Jefferson City, Missouri

Dear Sir:

This is in reply to your letter of recent date wherein you request an opinion from this department on the following statement:

"In House Bill No. 1036, Section 9, there is an appropriation under A. Personal Service and B. State Aid for the State Librarian of the State Library Advisory Board.

"We would like an opinion from your office as to whether travel and subsistence can legally be paid out of the appropriation in Section 9, subdivision A. Personal Service and B. State Aid."

Section 9 of House Bill No. 1036 of the 63rd General Assembly provides as follows:

"There is hereby appropriated out of the State Treasury, chargeable to the General Revenue Fund, the sum of Two Hundred Twelve Thousand Dollars (\$212,000.00), to the use of the State Librarian of the State Library Advisory Board for the purposes and in the amounts as are in this section specifically designated and set forth respectively; for the period beginning July 1, 1946 and ending June 30, 1947, as follows:

"A. PERSONAL SERVICE:

The salaries, wages and per diem of employees necessary to the administration

Then we come to the question of whether or not "travel and subsistence" may be paid out of the appropriation for "salaries, wages and per diem of employees," described in subdivision "A", entitled "Personal Service" of the foregoing section. Two conditions must exist before public funds may be paid out of the State Treasury, namely: (a) a law authorizing the payment of such funds; (b) the funds must be appropriated. Sections 23 and 28 of Article IV of the Constitution of 1945 are the authorities for the foregoing principle and they read as follows:

"Sec. 23. The fiscal year of the state and all its agencies shall be the twelve months beginning on the first day of July in each year. The general assembly shall make appropriations for one or two fiscal years, and the 63rd General Assembly shall also make appropriations for the six months ending June 30, 1945. Every appropriation law shall distinctly specify the amount and purpose of the appropriation without reference to any other law to fix the amount or purpose."

"Sec. 28. No money shall be withdrawn from the state treasury except by warrant drawn in accordance with an appropriation made by law, nor shall any obligation for the payment of money be incurred unless the comptroller certifies it for payment and the state auditor certifies that the expenditure is within the purpose of the appropriation and that there is in the appropriation an unencumbered balance sufficient to pay it. At the time of issuance each such certification shall be entered on the general accounting books as an encumbrance on the appropriation. No appropriation shall confer authority to incur an obligation after the termination of the fiscal period to which it relates, and every appropriation shall expire six months after the end of the period for which made." (Underscoring ours.)

It will be noted that Section 23 follows the language of Section 19 of Article X of the 1875 Constitution in that it requires that the appropriation shall distinctly specify the amount and purpose of the appropriation.

It will also be noted that under Section 28 of Article IV of the 1945 Constitution the duty is imposed upon the Auditor to determine that the proposed expenditure under the appropriation for travel and subsistence for the Librarian and State Library Advisory Board under said Section 9 is within the purpose of the appropriation and that there is in the appropriation an unencumbered balance to pay it.

From an examination of the Library Advisory Board Act, Senate Bill No. 369, Laws of Missouri 1945, page _____, Sections 14731 to 14736a, R. S. A. 1939, it will be found that the law would authorize the expenditure of state monies for subsistence and travel expense in the administration of that act. So the expenditures of funds for subsistence and travel allowance would be authorized under the law, provided these have been appropriated. In the case of State ex rel. Bradshaw v. Hackmann, 276 M. 600, the appropriation for the warehouse commissioner was made for travel within and without the state. The court, in that case, held that the appropriation did not comply with the constitutional provision, Section 19, Article X of the 1875 Constitution, because the warehouse act did not provide for travel without the state. That case is not exactly in point here, but it does construe the provision of the Constitution that the purpose for which the monies are appropriated must be authorized by law and that the monies must be appropriated.

This again brings us to the question of whether or not "travel and subsistence" may be paid out of the appropriation for salaries, wages and per diem under the heading of "Personal Service." From an examination of the appropriation acts of the 63rd General Assembly, and of prior general assemblies, it will be found that travel and subsistence expenses have been paid out of the subdivisions of the appropriation bills headed as "Operation" or "General Expense." In none of these appropriations do we find where such items have been paid under the subdivision "Personal Service."

The terms "salaries, wages" are synonymous terms. Bouvard v. K. C., Ft. S. & M. R. Co., 83 Mo. App. 498, 501, in Words and Phrases, Permanent Edition, Vol. 44, page 502:

"Terms 'wages' and 'salary' are for all practical purposes synonymous and mean sum of money periodically paid for services rendered, though in good usage word 'salary' suggests more important services and larger

compensation than 'wages.' Flamm v. City of Passaic, 184 A. 748, 749, 14 N. J. Misc. 362."

The term "per diem" is generally considered as compensation paid either for personal service or for subsistence and allowance on a daily basis. In Vol. 32, Words and Phrases, Permanent Edition, page 14, we find the following definition and application of the term "per diem":

"Term 'per diem,' as used in Const. art. 2, section 23, fixing compensation of members of Legislature, is synonymous with salary, and term 'salary' imports idea of compensation for personal service, and not repayment of money expended in discharge of duties of office. Peay v. Nolan, 7 S.W. (2d) 815, 817, 157 Tenn. 222, 60 A. L. R. 408."

Since the appropriation for the Library Advisory Board under the heading of "Personal Service" only appropriates monies for the pay of salaries, wages and per diem of the employees of that department, and since no monies are appropriated under the heading "Operations" or "General Expense" to reimburse such employees for subsistence and travel pay, we do not think the appropriation would be broad enough to include reimbursement for subsistence and travel pay.

CONCLUSION

From the foregoing, it is the opinion of this department that travel and subsistence of employees of the State Library Advisory Board and to the State Librarian may not be paid out of the appropriation to that department set out under the heading "Personal Service" in Section 9 of House Bill No. 1036 of the 63rd General Assembly. We are further of the opinion that the reimbursement for travel and subsistence for the aforesaid purposes may not be paid out of the appropriation under the heading "State Aid" set out in subdivision "B" of said appropriation.

Respectfully submitted,

APPROVED:

TYRE W. BURTON
Assistant Attorney General

J. E. TAYLOR
Attorney General

TWB:VLM