

Tennessee-Missouri Bridge Commission.) Questions relating to the administration of the Tennessee-Missouri Bridge Commission as a division of the Department of Business and Administration.

October 20, 1949

10/27/49

Missouri State Department of Business and Administration
Bert Cooper, Director,
State Office Building,
Jefferson City, Missouri.



Dear Sir:

In reply to your recent letter requesting an opinion of this department relating to the Tennessee-Missouri Bridge Commission, we are advised that the consent of Congress is provided for in a resolution now pending and that the passage of the same is expected very shortly. The opinions hereinafter stated are applicable when the consent of Congress has become effective.

1. Your first question reads: Is it necessary for the Tennessee-Missouri Bridge Commission to incorporate under the corporation laws of Missouri in order to issue and sell bonds, collect tolls and carry out the other provisions of law?

A compact between Tennessee and Missouri creating a Tennessee-Missouri Bridge Commission is included as a part of Senate Bill 153, which provides: "There is hereby created a Tennessee-Missouri Bridge Commission which shall be a body corporate and politic and which shall have the following powers and duties. * * *" (Those powers and duties are then enumerated).

It would seem unnecessary for the commission to incorporate under the general corporation laws of Missouri (or of Tennessee and qualify to do business in Missouri). The powers, duties, rights or liabilities of this commission, created as a corporate body by the general assembly, are fixed by statute and by a compact between the states and could neither be extended nor diminished by incorporation under general corporation laws.

Article XI, Sec. 2 of the Missouri Constitution provides:

"Corporations shall be organized only under general laws. No corporation shall be created, nor shall any existing charter be extended or amended by special law; nor shall any law remit the forfeiture of any charter granted by special act. All existing charters,

or grants of special or exclusive privileges, under which a bona fide organization was not completed, and business was not being done in good faith at the adoption of this Constitution, shall thereafter have no validity."

This section from the Constitution is applicable to the formation of private corporations. It would seem to have no application to the organization of the agency in question.

Article III, Sec. 40 (29) of Missouri Constitution provides:

"The general assembly shall not pass any local or special law: * * *(29) relating to ferries or bridges, except for the erection of bridges crossing streams which form the boundary between this and any other state."

The general assembly is thus authorized to enact special legislation relating to the erection of bridges crossing streams which form the boundary between this and another state.

In *Kansas City Bridge Co., v. Alabama State Bridge Corp.*, (59 F. (2nd) 48) the court said:

"It is clear the whole purpose of the act was to erect bridges essential to the highway system, to pay for them with tolls, and then to make them free for use of the public. It is well settled that the construction of public roads and bridges is a governmental function. *Dodge County Commissioners v. Chandler*, 96 U.S. 205, 204 L. Ed. 625; *Atkins v. Kansas*, 191 U.S. 207, 24 S. Ct. 124, 48 L. Ed. 148. The state may either perform this function in its own name or through its public officers or one of its governmental agencies. *Fitts v. McGhee*, 172 U.S. 516, 19 S. Ct. 269, 43 L. Ed. 535.

"The Alabama Bridge Corporation was but an agency or instrumentality through which the state acted in causing its public bridges to be constructed. It was not a private corporation in any sense of the word, but state officials, who might as well have been designated a board or commission, were ex officio members, and the only members of it. In the nature of things the state had to choose some such agency in order to effectuate its purpose."

A private corporation is generally defined as one formed by the voluntary agreement of its members for private purposes. Whereas, here we have the people of two states entering into a compact through their respective state legislatures, and the commissioners appointed by the governors of each state to create an agency for a public purpose. It would not seem necessary to organize such an agency created for a public purpose by the state legislatures under the general corporation laws.

2. Your second question reads: Since it will be necessary for the Tennessee-Missouri Bridge Commission to establish and maintain an office and headquarters from which to conduct their business, may such headquarters be established and operated at any place designated by the commission?

Senate Bill 153 and 154 did not provide for the location of an office for the commission. It would seem the location of the commission's office space is left within the discretion of the commission.

Of course, if the location of the commission's office had been expressly provided for in the compact then it probably would not be authorized to select a different location. In the absence of an express prohibition, the commission has, as an incident to its general powers, those powers necessary for carrying out its duties; these powers may be implied from those expressly granted the commission as necessary in the discharge of its obligations. Absent any provision for the location of an office it may be implied the selection is within the discretion of the commission.

3. Your third question reads: Since no appropriation was made to pay initial expenses to set up and get this agency into operation to earn a toll, will the Tennessee-Missouri Commission have the legal right to borrow money for operating expenses and pay obligations later?

Senate Bill 153 of the Sixty-fifth General Assembly provides as a part of the compact between Missouri and Tennessee that the commission shall have the power and duty:

"3. To contract, to sue and be sued in its own name; to purchase or otherwise acquire, hold and dispose of real and personal property:

"5. To issue bonds on the security of the revenues derived from the operation of the bridge and ferries for the payment of the cost of the bridge, its approaches, ferry or ferries, and the necessary lands,

easements and appurtenances thereto including interest during construction and all necessary engineering, legal, architectural, traffic surveying and other necessary expenses. Such bonds shall be negotiable bonds of the commission, the income of which shall be tax free. The principal and interest of the bonds, and any premiums to be paid for their retirement before maturity, shall be paid solely from the revenue derived from the bridge and ferries;

"7. To perform all other necessary and incidental functions."

The commission has the powers as enumerated above to incur indebtedness to cover operating and construction expenses.

The express provision that the Commission may issue bonds to borrow money sufficient to cover all authorized expenditures would reasonably exclude borrowing money in any other manner. It is probable that it would be unable to do so, since it could not pledge the credit of either of the states and all the net revenue of the Commission will be pledged under the bond issue. While the Commission must incur some obligations preliminarily to the issuance and sale of the bonds, which can be paid out of the proceeds of the bonds, it is not authorized to borrow money or to issue or execute anything in the nature of a promissory note.

4. Your fourth question reads: Should any or all money collected from earnings, bonds sold or notes negotiated, be paid to the State Department of Revenue to the credit of the Tennessee-Missouri Commission bridge fund?"

The money collected from such sources should not be paid either to the Missouri State Department of Revenue or to the comparable Department of the State of Tennessee, but should be held by the commission in its own name to be disposed of as pledged by the compact between the states.

Article III, Sec. 36, of the Missouri Constitution provides:

"All revenue collected and money 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. * * *".

Article IV, Sec. 15, of the Missouri Constitution provides:

"All revenue collected and moneys received by the State from any source whatsoever shall go promptly into the state treasury, and all interest, income and returns therefrom shall belong to the state. Immediately on receipt thereof the state treasurer shall deposit all moneys in the state treasury to the credit of the state in banking institutions selected by him and approved by the governor and state auditor, and he shall hold them for the benefit of the respective funds to which they belong and disburse them as provided by law. Such institutions shall give security satisfactory to the governor, state auditor and state treasurer for safekeeping and payment of the deposits on demand of the state treasurer authorized by warrants of the state auditor. No duty shall be imposed on the state treasurer by law which is not related to the receipt, custody and disbursement of state funds."

It is manifest that the sections quoted above only apply to money belonging to the state. In discussing these sections as they appear in the Constitution of 1875, the court said:

"By revenue of the state required by this section to be paid into the state treasury, is meant the current income, from whatever source derived, which is subject to appropriation for public uses, or money which the state in its sovereign capacity is authorized to receive." (State ex rel. Thompson v. Board of Regents for Northeast Missouri Teachers College (205 Mo. 57; 268 S.W. 698).

It seems clear that income from the sale of bonds or from toll charges is not income to the state subject to appropriation for public use. Rather, it represents funds pledged to the uses designated by the compact entered into by the two states and not money which the state in its sovereign capacity is authorized to receive and to appropriate for public uses.

5. Your fifth question reads: If the answer to question four is "yes" does the statute relating to the duties of the director in the Department of Business and Administration expressed in Laws of Mo. 1945, p. 619, Sec. 4 (c) apply?

In view of the answer to question four, this question requires no answer.

6. Your sixth question reads: In case the answer to question four is "No", are we correct in assuming that the director of the Department of Business and Administration will have met the legal requirements of his duties pertaining to finances of the agency, when he has required monthly reports from the commission as to funds collected and an itemized account of expenditures in the department in accordance with duties of the director expressed in Laws of Mo. 1945, p. 619, Sec. 4 (f), said report to meet requirements and be approved by him. Provided, further, however, that the agency meets other obligations of the law applying to other divisions in the State Department of Business and Administration.

Laws of Mo. 1945, p. 618, Sec. 4 (f) provides:

"It shall be the duty of the director of the Department of Business and Administration to prepare and submit to each regular session of the general assembly and to the governor a report of the activities of the department, including the activities of each division in the department, which report shall be in lieu of any report now required by law for any department or office, the powers and duties of which are by this act vested in a division in the department."

Since the Tennessee-Missouri Bridge Commission was assigned to the Department of Business and Administration by executive order dated July 27, 1949, pursuant to the provisions of Section 12, Article IV, of the Constitution of Missouri, 1945, the director of that department will be required to make the financial report referred to above to the general assembly and to the governor.

Senate Bill 153 of the Sixty-fifth General Assembly (Article III) requires the Tennessee-Missouri Bridge Commission to "report annually to the governor of each state, setting forth in detail the operations and transactions conducted by it pursuant to to this agreement and any legislation thereunder." It may be noted that the commission is not required by law to render such a report to the General Assembly, but only to the governor.

7. Your seventh question reads: Am I correct in the assumption that if the Tennessee Missouri Commission makes a report to each governor in accordance with Article III, Senate Bill 153 of the Sixty-fifth General Assembly, the Director of the Department of Business and Administration will also make a report of the activities of the division as a part of his duties as required in Laws of Mo. 1945, p. 618, Sec. 4 (f)?

Senate Bill 153, Article III, provides:

"The commission shall keep an accurate record of the cost of the bridge and of other expenses and of the daily revenues collected and shall report annually to the governor of each state setting forth in detail the operations and transactions conducted by it pursuant to this agreement and any legislation thereunder."

Laws of Mo. 1945, p. 618, Sec. 4 (f) provides that the director of the Department of Business and Administration shall:

"Prepare and submit to each regular session of the general assembly and to the governor a report of the activities of the department, including the activities of each division in the department, which report shall be in lieu of any report now required by law for any department or office, the powers and duties of which are by this act vested in a division in the department."

It appears from these quoted sections that both the Department of Business and Administration and the Tennessee-Missouri Bridge Commission would be required to submit the reports referred to. It is believed that the report required from the Director of the Department of Business and Administration need not be "in detail", as is required by the report of the Commission.

8. Your eighth question reads: Will you enumerate the duties of the Director of the Department of Business and Administration pertaining to the Tennessee-Missouri Commission as required by law?

The general duties of the Director of the Department of Business and Administration are prescribed by statute. (See Laws Mo. 1945, p. 618, Sec. 14.)

Since the act creating the Tennessee-Missouri Bridge Commission does not specify any new duties to be imposed upon the Director of the Department of Business and Administration, his duties in relation to the commission are those general duties imposed by statute at the time of the creation of the commission.

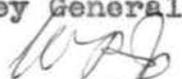
CONCLUSION.

1. It is not necessary for the Tennessee-Missouri Bridge Commission to incorporate under the general corporation laws of Missouri in order to execute their duties.
2. The Tennessee-Missouri Bridge Commission may in its discretion establish and maintain an office or headquarters at the location of their choice.
3. The Tennessee-Missouri Bridge Commission has no power to borrow money other than by the specific method authorized by statute, i.e. by sale of bonds.
4. The money collected by the Tennessee-Missouri Bridge Commission from earnings, bonds sold or notes negotiated, should be held in the name of the commission, to be disposed of as provided by the compact between the states.
5. Required no answer.
6. The Director of the Department of Business and Administration will have met the requirements of the duties imposed by Laws Mo. 1945, p. 618, Sec. 4 (f) by making the required reports.
7. The Department of Business and Administration will be required to submit a report of the activities of the Tennessee-Missouri Bridge Commission to the Governor and General Assembly.
8. The general duties of the Director of the Department of Business and Administration are enumerated in Laws Mo. 1945, p. 618, Sec. 4.

Respectfully submitted,

APPROVED:



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