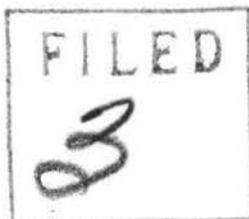


APPROPRIATIONS:
COMPTROLLER:
CONSTITUTIONAL LAW:
BOUNTIES:

Attempted limitation of reimbursement to
Counties for payment of bounties by Per-
fected H.B. 224, Sec. 8, and Perfected
H.B. 325, Sec. 3.160, unconstitutional
and void.



April 16, 1953

Honorable Newton Atterbury
State Comptroller and
Director of the Budget
Jefferson City, Missouri

Dear Mr. Atterbury:

In your letter of March 27, 1953, you re-
quested an opinion on the following:

"We would very much appreciate a verbal
opinion in regard to payment out of ap-
propriations made in Perfected House
Bills 224, Section 8 and 325, Section
3.160.

"We question this emergency appropria-
tion and regular appropriation due to
the wording in line 6 and 7 of House
Bill 224 and line 6 and 7 of House Bill
325, which reads in part: 'to the ex-
tent of one-half the bounties paid',
which conflicts with Section 279.030,
Revised Statutes of Missouri, 1951,
which reads in part: 'shall refund
to the treasurer of such county two-
thirds of all bounties so paid by such
county.'

"Could the Comptroller and the State
Auditor make certification as set forth
in the two house bills mentioned, and,
if so, in what proportion should certi-
fication be made?"

Provision for reimbursement to Counties to the
extent of two-thirds of the amount paid by them as bounty
for coyote, wildcats and wolf scalps is made by Section
279.030, 1951 Supplement, RSMo 1949:

Honorable Newton Atterbury:

"279.030. Payment of bounties--disposition of scalps.--The clerk shall preserve all such scalps until the next regular term of the county court, when he shall produce such scalps to the county court and the court shall cause warrants to be made for the amount of bounty due to such claimant and shall forthwith order all such scalps to be destroyed by burning in the presence of the county court. The clerk shall thereupon certify to the state comptroller the name and address of the claimant for such bounty and the amount of bounty paid by the county, which shall be audited by the state comptroller, and upon approval by the state comptroller and the state auditor, the state treasurer shall refund to the treasurer of such county two-thirds of all bounties so paid by such county."

(Underscoring ours.)

Perfected House Bill 224, an Appropriation Bill, in Section 8, appropriates Fifty Thousand (\$50,000.00) Dollars for payment to Counties to one-half of the amount paid out by such Counties as bounties for destruction of the animals listed in Section 279.010, 1951 Supplement, RSMo 1949.

"Section 8. There is hereby appropriated out of the state treasury, chargeable to the General Revenue Fund, the sum of Fifty Thousand Dollars (\$50,000.00), or so much thereof as may be necessary to pay the several counties of Missouri bounties for the destruction of any wolf, coyote or wildcat, or any wolf or coyote pup or wildcat kitten, to the extent of one-half the bounties paid for the destruction of any or all of the aforementioned by any county of the state; for the period beginning January 7, 1953 and ending June 30, 1953.

"The foregoing amount is in addition to the amount appropriated for the same purpose for the 1951-1953 biennial period as set out in section 3.160 of House Bill No. 4, an act of the Sixty-sixth General Assembly."

Honorable Newton Atterbury:

(Underscoring ours.)

House Bill 325, Section 3.160, makes similar provision:

"Section 3.160. There is hereby appropriated out of the state treasury, chargeable to the General Revenue Fund, the sum of Eighty Thousand Dollars (\$80,000.00), or so much thereof as may be necessary to pay the several counties of Missouri bounties for the destruction of any wolf, coyote, or wildcat, or any wolf or coyote pup, or wildcat kitten, to the extent of one-half the bounties paid for the destruction of any or all of the aforementioned by any county of the state; for the period beginning July 1, 1953 and ending June 30, 1955."

(Underscoring ours.)

In effect, the Legislature is attempting in an Appropriation Bill to lower the amount of reimbursement to Counties from two-thirds of the money expended by the Counties to one-half. This attempt is unconstitutional as repugnant to Missouri Constitution, 1945, Article III, Section 23:

"Sec. 23. Limitation of Scope of Bills--Contents of Titles--Exceptions.--No bill shall contain more than one subject which shall be clearly expressed in its title, except bills enacted under the third exception in section 37 of this article and general appropriation bills, which may embrace the various subjects and accounts for which moneys are appropriated."

The case of State ex rel. Gaines vs. Canada, et al., 342 Mo. 121, 113 S.W. (2d) 783, decided by the Supreme Court in 1937, decides the question of whether an Appropriation Bill can amend a general law. Negro relator sought and was denied admission to the University of Missouri Law School. He asked for Writ of Mandamus to

Honorable Newton Atterbury:

compel the Registrar and Curators of the University of Missouri to admit him, complaining of discrimination. One of the grounds upon which he based his claim of discrimination was that, of course, he could not attend the University of Missouri under existing statutes, and that provision was made by statute to pay tuition fees at another State University only in excess of what would be charged to him were he a student at the University of Missouri. Section 9622, R.S. Mo. 1929, authorized the Board of Curators of Lincoln University to pay the reasonable tuition fees of Negro residents of Missouri for attendance at the University of any adjacent State. However, the Appropriation Act of 1935 provided, in part, as follows:

"There is hereby appropriated out of the State Treasury chargeable to the general revenue fund for the years 1935 and 1936, the sum of Ten Thousand Dollars (\$10,000.00) to be used in paying the tuition of negro college students to some standard college or university not located in Missouri, * * * provided that the total amount paid shall not exceed the difference between the registration and incidental fees charged by the University of Missouri to resident students and the school attended for similar courses."

(Underscoring ours.)

The Supreme Court disposed of that contention in the following manner, l.c. 790:

"Appellant contends that Missouri would not pay his full tuition in an adjacent State, but only the difference between the tuition charged by the University of Missouri and that charged by the adjacent States, as provided in the appropriation act of 1935. The proviso in the 1935 act which attempts to limit the authority of the board of curators to the payment of the difference between the tuition in Missouri and in the adjacent States is unconstitutional and void. A general statute (section 9622, R.S. 1929 (Mo. St. Ann. § 9622, p. 7328)) authorizes the

Honorable Newton Atterbury:

board of curators of Lincoln University to pay the reasonable tuition fees of negro residents of Missouri for attendance at the university of any adjacent State. This statute cannot be repealed or amended except by subsequent general legislation. Legislation of a general character cannot be included in an appropriation bill. To do so would violate section 28 of article 4 of the Constitution, which provides that no bill shall contain more than one subject which shall be clearly expressed in its title. There is no question but what the mere appropriation of money and the amendment of section 9622, a general statute granting certain authority to the board of curators, are two different and separate subjects. State ex rel. Davis v. Smith, 335 Mo. 1069, 75 S.W. 2d 828; State ex rel. Hueller v. Thompson, 316 Mo. 272, 289 S.W. 338. The valid and invalid portions of the statute are separable. If we disregard the invalid proviso, there is left a complete workable statute which appropriates the sum of \$10,000 for the purposes therein named. Had appellant applied for the benefits of this appropriation, it would have been the duty of the board of curators of Lincoln University to pay his full tuition in the law department of the university of an adjacent State. * * *."

(Underscoring ours.)

The Supreme Court of Missouri in State ex rel. Davis vs. Smith, 75 S.W. (2d) 828, 335 Mo. 1069, declared that an Act appropriating \$3,000.00 from the General Revenue Fund to the Board of Barber Examiners' Fund was not sufficient to amend a statute requiring that salaries and expenses of the Board be paid solely from the fund created from fees collected by said Board and commented on the validity of general legislation appearing in Appropriation Bills, l.c. 830:

"Besides, legislation of a general character cannot be included in an appropriation bill. If this appropriation bill had attempted to amend section 13525, it would have been void in that it would have violated

Honorable Newton Atterbury:

section 28 of article 4 of the Constitution which provides that no bill shall contain more than one subject which shall be clearly expressed in its title. There is no doubt but what the amendment of a general statute such as section 13525, and the mere appropriation of money are two entirely different and separate subjects. State ex rel. Hueller v. Thompson, State Auditor, 316 Mo. 272, 289 S.W. 338.

The two House Appropriation Bills in question attempt to indirectly lower the percent of reimbursement to Counties provided by Section 279.030. This clearly is legislation of a general character and the view of State vs. Canada and State vs. Smith, supra, are applicable. However, the valid and invalid sections are severable, and the portion appropriating the money will stand. (State vs. Canada, supra.)

CONCLUSION

It is, therefore, the opinion of this office that the Legislature cannot in an Appropriation Bill amend Section 279.030, 1951 Supplement, RSMo 1949, to lower the percentage of reimbursement to Counties, since that would be general legislation in an Appropriation Bill, and thus repugnant to Article III, Section 23, Missouri Constitution of 1945. The valid and invalid sections are severable, and the appropriation itself would stand.

If either of the two subject Bills are passed, and if there is no general legislation otherwise on this subject, the Comptroller and Auditor should certify a two-thirds reimbursement.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul McGhee.

Yours very truly,

JOHN M. DALTON
Attorney General

PMcG:IRK