

APPROPRIATION:
DEPARTMENT OF PUBLIC
HEALTH AND WELFARE:
CONSTITUTIONAL:
GENERAL ASSEMBLY:

Construing House Bill 396 passed by the
67th General Assembly. Part invalid as
an attempt by the General Assembly to
legislate in an appropriation act.

XXXXXXXXXX

John M. Dalton

July 30, 1953

XXXXXXXXXX

John C. Johnsen



Mr. Newton Atterbury
State Comptroller and Director
of the Budget
Department of Revenue
State of Missouri
Jefferson City, Missouri

Dear Sir:

This will acknowledge receipt of your recent letter
for an opinion which reads:

"Governor Phil M. Donnelly on June 30, 1953,
sent the Secretary of State signed House Bill
No. 396.

"The Governor attached to House Bill No. 396,
at the time of signing, a statement of items,
or portions of items, to which he objected.
Section 7 of his transmittal letter reads
as follows:

"In Section 6.010 (page 2 of the Truly Agreed
To and Finally Passed bill, lines 27 to 37, in-
clusive) and in Section 6.020 (page 4, lines
44 to 55, inclusive) and 6.160 (page 14, lines
40 to 49, inclusive), appropriating funds for
the use of the Director of the Department of
Public Health and Welfare, the Division of Health,
and the Director of Welfare, respectively, the
following language is contained in the appro-
priations for Operation:

"* * *provided that no funds shall
be expended out of this appropriation
for any postage or postal charges ex-
cept the following:

(A) Those funds necessary for
the operation of postage meter ma-
chines in the central office.

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(B) Those funds necessary for the purchase of postage for use by regular traveling field employees.

(C) Those funds necessary for the purchase of postage for use by local county offices."

'In my opinion, these restrictions amount to general legislation in an appropriation act. The Supreme Court of Missouri in numerous cases has held that general legislation may not properly be included in an appropriation act and that whenever an attempt is made to do so the provision which amounts to general legislation is invalid.

'I am directing the State Comptroller to obtain from the Attorney General his opinion regarding the effect of these provisions.'

"Will you please give us a written opinion on this matter, advising us what position we should take if items for postage coming under such limited appropriations should be presented to us."

The particular sections of House Bill 396 passed by the 67th General Assembly and questioned are Section 6.010 and 6.020. Section 6.010, supra, reads in part:

"Section 6.010. There is hereby appropriated out of the state treasury, chargeable to the General Revenue Fund, the sum of Thirty-two Thousand Dollars (\$32,000.00), for the use of the Director of the Department of Public Health and Welfare, for the payment of salaries, wages and per diem of officers and employees; for the original purchase of property; for the repair and replacement of property; and for the general operating expenses; for the period beginning July 1, 1953 and ending June 30, 1955, as follows:

Personal Service:

* * * * *

Additions, Repairs and Replacements:

* * * * *

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Operation:

General expense: including communication, printing and binding, transportation of things, travel within and without the state, material and supplies, consisting of educational scientific supplies, stationery and office supplies, and other ordinary and necessary expense; provided that no funds shall be expended out of this appropriation for any postage or postal charges except the following:

(A) Those funds necessary for the operation of postage meter machines in the central office.

(B) Those funds necessary for the purchase of postage for use by regular traveling field employees.

(C) Those funds necessary for the purchase of postage for use by local county offices. * * *"

(Underscoring ours.)

Section 6.020, supra, reads, in part, as follows:

"Section 6.020. There is hereby appropriated out of the state treasury, chargeable to the General Revenue Fund, the sum of One Million One Hundred Sixty Thousand Dollars (\$1,160,000.00), for the use of the Division of Health, for the payment of salaries, wages and per diem of officers and employees; for the original purchase of property; for the repair and replacement of property; and for the general operating expenses; for the period beginning July 1, 1953 and ending June 30, 1955, as follows:

Personal Service:

* * * * *

Additions, Repairs and Replacements:

* * * * *

Operation:

General expense: communications, printing and binding, transportation of things, travel within and without the state, rent of machines, other general expense including materials and

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supplies, consisting of educational scientific supplies, medical, surgical, laboratory and hospital supplies, stationery and office supplies, for reimbursement to counties, and cities for expenses in operating approved local health units and other ordinary and necessary expense; provided that no funds shall be expended out of this appropriation for any postage or postal charge except the following:

(A) Those funds necessary for the operation of postage meter machines in the central office.

(B) Those funds necessary for the purchase of postage for use by regular traveling field employees.

(C) Those funds necessary for the purchase of postage for use by local county offices. * * *

(Underscoring ours.)

It is well established that the General Assembly cannot legislate by an appropriation act. To do so would violate the provision of Section 23, Article III, Constitution of Missouri which reads:

"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 objectional features in the foregoing sections of said House Bill 396 are underscored. The underscored portions are the same in both sections.

In *State v. Smith*, 75 S. W. (2d) 828, 100 S. W. 2d 830, a member of the State Board of Barber Examiners brought a mandamus action against the State Auditor, to compel him to issue a warrant for personal services rendered by him as a member of said board, under an Appropriation Act appropriating out of the State Treasury, chargeable to the general revenue fund, \$3,000 to the Board of Barber Examiners' Fund. The Legislature under Section 13525, R. S. Mo. 1929, provided all salaries and expenses of said Board shall be paid by warrants drawn against the fund created

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from fees collected and paid into the State Treasury and against the fund only. The Court held that general legislation cannot be included in an Appropriation Bill, to do so would violate Section 28, Article IV, Constitution of Missouri, 1875, and ordered the alternative writ issued, quashed, and a peremptory writ denied, and in so doing the Court said:

"We agree that the power of the Legislature over these matters, subject to constitutional limitations, is supreme. We also agree that the Constitution does not prevent the Legislature from providing that public officers' salaries and expenses shall be paid out of the general revenue. This being true, the Legislature had authority to provide that all or any specified part of the salary and expenses of the barber board should be paid out of the general revenue, but it did not do so. On the contrary, it has provided, in express terms, by section 13525, R.S. 1929 (Mo. St. Ann. Sec. 13525, p. 637), that the salaries and expenses of such board shall be paid by warrants drawn against the fund created from fees collected by the board and paid into the state treasury, and against that fund only. The Legislature could, at any time, provide a different method for paying the salaries and expenses of this board by amending section 13525, or by repealing it and enacting a new law in lieu thereof, but until it does so, section 13525, R.S. 1929 (Mo. St. Ann. Sec. 13525, p. 637), remains the law of this state. We cannot escape the conclusion that if section 13525, R. S., is still the law, and if it provides that the salaries and expenses of the board shall be paid out of the fund created from the fees collected by the board, and out of that fund only, the attempt to appropriate money out of the general revenue fund to pay any part of such salaries or expenses is contrary to the existing law of the state, as declared in section 13525, supra.

"It cannot be said that the act appropriating \$3,000 from the general revenue

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fund to the board of barber examiners' fund amounted to an amendment of section 13525, R.S. 1929 (Mo. St. Ann. Sec. 13525, p. 637). It does not attempt to amend that section. Its sole purpose was to appropriate \$3,000 from one fund to another. It reads as follows:

"There is hereby appropriated out of the state treasury, chargeable to the general revenue fund, the sum of three thousand (\$3,000.00) dollars to the Board of Barber Examiners Fund." (Laws 1933-34, p. 12, Sec. 12B.)

"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 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."

(2d) Also, in a more recent case, State v. Canada, 113 S. W. 783, 1. c. 790, the Court said:

"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. Sec. 9622, p. 7328)) authorizes 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. This statute cannot be repealed or amended except by subsequent general legislation,

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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. * * *

Under the foregoing decisions the Supreme Court has held that valid and invalid portions of an appropriation bill are separable. In view of this, that portion of said House Bill 396 appropriating money for said Department of Welfare is valid and that portion underscored which attempts to legislate and which is clearly invalid should be entirely disregarded.

CONCLUSION

Therefore, it is the opinion of this department that those underscored portions of Sections 6.010 and 6.020, House Bill 396, passed by the 67th General Assembly are invalid for the reason that it is an attempt by the Legislature in an appropriation act to pass general legislation which has been declared by the Appellate Courts of this state to be invalid. However, this does not in any manner invalidate the balance of the bill appropriating money to said department.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Aubrey R. Hammett, Jr.

Very truly yours,

JOHN M. DALTON
Attorney General

ARR/mv.