

CONSERVATION  
COMMISSION:  
APPROPRIATION:  
LEGISLATURE:

Construing Section 4.510 of House Bill  
No. 361, passed by the Sixty-seventh  
General Assembly.



June 11, 1953

Mr. I. T. Bode  
Director  
Missouri Conservation Commission  
Jefferson City, Missouri

Dear Mr. Bode:

This will acknowledge receipt of your request for  
an official opinion, which reads:

"In accordance with the instruction  
of the Conservation Commission in  
regular meeting on June 2, 1953, I am  
transmitting to you herewith a re-  
quest for an official opinion as  
follows.

"Section 4.510 of House Bill No. 361  
reads as follows:

"Section 4.510. There is hereby  
appropriated out of the state treasury,  
chargeable to the Conservation Com-  
mission Fund, including but not limited  
to funds received from federal or  
other cooperating agencies for wild-  
life and forest conservation, not to  
exceed Eight Million Five Hundred  
Thousand Dollars (\$8,500,000.00) for  
the use of the Conservation Commission  
for the payment of salaries, wages  
and per diem of the officers, members  
and employees; for the original pur-  
chase of property; for the repair  
and replacement of property and for  
ordinary and necessary operating ex-  
penses; provided, however, that no  
funds shall be expended from this  
appropriation for the rental or  
erection of a building for use as a  
central office building of the

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Conservation Commission and; provided further that no funds shall be expended from this appropriation except in accordance with a budget regularly adopted by the Conservation Commission; for the period beginning July 1, 1953 and ending June 30, 1955.'

"The Commission questions the validity of that portion of the section as underlined above, and requests your opinion as to whether or not the Legislature can place such limitations on the use of its funds. It would be appreciated very much if prompt attention could be given to this request."

House Bill No. 361, passed by the 67th General Assembly, is an appropriation bill.

The law is well established in this state that the General Assembly cannot legislate by an appropriation act. Legislation of a general character cannot be included in an appropriation bill. To do so would violate the provisions of the Constitution of Missouri, namely, Section 23, Article III, Constitution of Missouri, 1945, which follows Section 28, Article IV, Constitution of Missouri, 1875, and reads:

"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."

In State v. Smith, 75 S.W. (2d) 828, l.c. 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

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the fund created 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 the 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 appro-

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priating \$3,000 from the general revenue 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."

Also, in a more recent case, State v. Canada, 113 S.W. (2d) 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 in unconsti-

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tutional 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. 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. \* \* \*

Sections 40(a) and 43, Article IV, Constitution of Missouri, 1945, vest in the Conservation Commission full authority to control, manage, restore, conserve and regulate the bird, fish, game, forestry and all wildlife resources of the state and administration of all laws pertaining thereto, and further provide that all fees, moneys or funds arising from the operation and transactions of the Commission shall be expended and used by said commission for such purposes.

In view of the foregoing decisions, the court has clearly stated that valid and invalid portions of an appropriation bill are separable. Therefore, that part of said bill merely appropriating money for said commission is valid and that portion underscored in your request is clearly invalid, and should be entirely disregarded.

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CONCLUSION

Therefore, it is the opinion of this department that the portion of Section 4.510, of House Bill No. 361, underscored in your request, is 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 in this state to be invalid. However, this does not in any manner invalidate the portion of said appropriation immediately preceding the underscored part included in your request.

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

Very truly yours,

JOHN M. DALTON  
Attorney General

ARH:sw:lrt