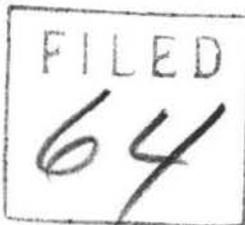


FUND COMMISSIONERS: Procedure for payment of coupons detached
APPROPRIATION: from state road bonds in absence of an
CONSTITUTION: appropriation by the Legislature. Fund
under Section 30, Article IV, Constitution
of Missouri, 1949, for payment of principal
and interest of any outstanding state road
bonds stands appropriated without legislative
action.

XXXXXXXXXX

John M. Dalton

August 17, 1953



XXXXXXXXXX

John C. Johnsen

Mr. M. E. Morris, Secretary
Board of Fund Commissioners
Jefferson City, Missouri

Attention: Mr. Alvin Papin

Dear Sir:

This will acknowledge receipt of your recent request
which reads:

"The Board of Fund Commissioners at a
special meeting held on July 17, 1953,
instructed me to submit the following
proposition to your office for solution:

"The Central Missouri Trust Company has
for collection coupons detached from State
of Missouri Road Bonds, Series P, Numbers
2001 to 2050, due February 1, 1932 and each
succeeding due date through August 1, 1938
totaling \$12,396.00.

"There is a balance in the 1951-53 appro-
priation for this purpose of \$9,915.00.
The 1953-55 appropriation provides only
enough for current payments of principal
and interest for that period.

"Sufficient funds were placed in the Chase
National Bank, New York, for the payment of
these coupons at maturity and after remain-
ing unclaimed for a period of more than 10
years the money was returned by the bank
and placed in the State Road Bond Interest
and Sinking Fund.

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"For provision concerning this matter, we refer you to Article IV, Sections 28 and 30, Constitution of Missouri, RSMo. 1949, pages 58 and 59, also Section 33.460, page 213 R.S.Mo. 1949.

"We desire to know how to make proper payment of these coupons at this time."

Your request boils down to whether available funds in the State Road Bond Interest and Sinking Fund which is the particular fund referred to in Section 30, Article IV, Constitution of Missouri, 1945, as a special fund, can be used for the payment of principal and interest on any outstanding state road bonds without first being appropriated by the Legislature.

There can be no question that the coupons now presented by the Central Missouri Trust Company for collection referred to in paragraph two of your request constitutes valid and binding obligations of the state. Section 34, Article IV, Constitution of Missouri, 1945, reaffirms this conclusion and reads in part:

"* * * All bonds issued under or recognized by section 44a of article IV of the previous Constitution, which remain unpaid shall be valid obligations of the state and shall be paid according to the tenor thereof. * * *"

Section 44a, Article IV, herein above referred to, was a part of the Constitution of 1875 and authorized a bond issued for highway purposes and in part provided that said motor vehicle registration fees and licenses and taxes on motor vehicles and certain other taxes, after the paying of certain specified expenditures and so long as any said bonds therein authorized remained unpaid, shall be and stand appropriated without legislative action and to the payment of the principal and interest of the said bonds and for that purpose shall be credited to the State Road Bond Interest and Sinking Fund provided by law.

Section 30, Article IV, Constitution of Missouri, 1949, contains a very similar provision and reads in part:

"* * * For the purpose of constructing and maintaining an adequate system of connected state highways all state

revenue derived from highway users as an incident to their use or right to use the highways of the state, including all state license fees and taxes upon motor vehicles, trailers, and motor vehicle fuels, and upon, with respect to, or on the privilege of the manufacture, receipt, storage, distribution, sale or use thereof (excepting the sales tax on motor vehicles and trailers, and all property taxes,) less the cost, (1) of collection thereof, (2) of maintaining the commission, (3) of maintaining the highway department, (4) of any workmen's compensation, (5) of the share of the highway department in any retirement program for state employees as may be provided by law, (6) and of administering and enforcing any state motor vehicle laws or traffic regulations, shall be credited to a special fund and stand appropriated without legislative action for the following purposes, and no other:

"First, to the payment of the principal and interest on any outstanding state road bonds.

"Second, any balance in excess of the amount necessary to meet the payment of the principal and interest of any state road bonds for the next succeeding twelve months shall be credited to the state road fund and shall be expended under the supervision and direction of the commission for the following purposes: * * *"

The General Assembly of this state has continually, in the past, appropriated from said fund moneys to meet such payment. However, this of itself is not conclusive that such fund must first be appropriated before the payments can be made. A well established rule of statutory construction is that actual construction given in a statute or constitutional provision over a long period of time by those charged with its administration, acquiesced in the courts and legislature, is strong evidence of its true meaning.

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However, this is not conclusive. See State ex rel. Chick v. Davis, 201 S.W. 529, 273 Mo. 660. However, this is true only when the language of the statute is ambiguous and doubtful. See State ex rel. National Life Insurance Company v. Hyde, 241 S.W. 396, 292 Mo. 342.

The foregoing constitutional provision provided that the money in said special fund, namely the State Road Bond Interest and Sinking Fund, should be credited to a special fund and stand appropriated without legislation for the payment of principal and interest on any outstanding state road bonds, certainly is not ambiguous. Therefore, the mere fact that the General Assembly has always, heretofore, appropriated such moneys for such payment is no criterion that it is absolutely necessary in order to make such payments.

In the case of State ex rel. Publishing Company v. Hackmann, 314 Mo. 33, l.c. 51, the Supreme Court, in fact held that the moneys in the fund in question stand appropriated without any legislative action and reads:

"VIII. Relator contends that Section 44a of Article IV of the Constitution appropriates, without further legislative action, money from the motor vehicle license taxes, for the payment of the maintenance of the State Highway Commission.

"The language thus sought to be construed by relator is as follows:

"Any motor vehicle registration fees or license fees or taxes, authorized by law, except the property tax thereon, less the cost and expense of collection and the cost of maintaining any State Highway department or commission, authorized by law, shall, after the issuance of such bonds, and so long as any bonds herein authorized and unpaid, be and stand appropriated without legislative action for and to the payment of the principal and interest of said bonds, and shall be credited to a sinking fund to be provided for by law." (See Sec. 44a, Mo. Const.; Laws 1921, 1st Ex. Sess., p. 196.)

"This provision makes no attempt to appropriate, without legislative action, the money to pay the maintenance expenses of the Highway Commission. It does appropriate without further legislative action that portion of the money received from

automobile license fees which remains after deducting the cost of collecting the tax and maintaining the Highway Commission, and it appropriates the remainder to the payment of the principal and interest of certain bonds. It makes no attempt whatever to appropriate without legislative sanction the amount needed for the expenses of the Commission. Who, therefore, is to determine the amount required to maintain the Highway Commission? Is this to be determined by the Highway Commission, unhampered by legislative permission, or by the Legislature in the regular way by an appropriation act?

"Section 19, Article 10, of the Constitution of Missouri, expressly provides that no money shall be paid out of the State Treasury except in pursuance of an appropriation by law. This section controls unless modified by a later constitutional provision. It is true that Section 44a, supra, does modify it as to that portion of the automobile license tax to be paid upon the principal and interest of said bonds, but that is the only modification and there is nothing in Section 44a which in any manner conflicts with or prevents the provisions of Section 19, supra, from controlling with reference to all moneys paid out of the State Treasury for the support and maintenance of the Highway Commission. It thus clearly appears that that portion of the license tax which is to be paid out of the State Treasury for the expenses of maintaining the Highway Commission must under the express provisions of the Constitution (sec. 19, supra) be first appropriated by act of the Legislature."

Sections 28 and 30 of Article IV, Constitution of Missouri, 1945, were both adopted by the people of this state at the same time. Both sections, to a great extent, follow the language of the old Constitution of 1875. Section

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28, supra, follows Section 19, Article X, Constitution of 1875, and Section 30 follows that of 44a, Article IV, same Constitution.

One of the cardinal rules of statutory construction likewise applicable in construing provisions of the constitution (see State ex rel. Buchanan County v. Imel, 146 S.W. 783, 242 Mo. 293, l.c. 301) is a different section dealing with features of the same general subject matter must be construed together and harmonized, if possible. See Consolidated School District No. 4, Greene County, v. Day; Johnson v. Cruckmeyer, 29 S. W. (2d) 730, 224 Mo. App., 351.

Another equally well established rule is that where the language of a statute is plain and unambiguous, it may not be construed, but must be given effect as written. See State ex inf. Rice ex rel. Allman v. Hawk, 360 Mo. 490, 228 S.W. (2d) 785, l.c. 789 (8,9), also State ex rel. Bell v. Phillips Petroleum Co., 56 S.W. (2d) 764, 349 Mo. 360.

The language used in Section 30, Article IV, supra, relative to said fund standing appropriated without legislative action, is in no manner ambiguous and therefore, under the foregoing rule of construction, we believe no construction is required, likewise, the other rule of statutory construction can be applied with the same result and, that is, that said provision relative to the special fund standing appropriated without any legislative action, can be considered as an exception to the provisions of Section 28, supra.

Section 33.460, Vernon's Annotated Missouri Statutes, provides procedure for Fund Commissioners to follow in such payment and reads:

"33.460. Duty of fund commissioners to make requisition for amount of interest

"It shall be the duty of the fund commissioners at least ten days before the interest on the bonded indebtedness of the state falls due, on or before the maturity of any state bonds, or the date when option bonds of the state are to be paid, to draw their requisition for the amount necessary to pay such interest on bonds, and the necessary expenses to be incurred in transmitting such moneys; whereupon the comptroller shall certify the amount to the state auditor, and the state auditor shall issue his warrant upon

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the state treasury therefor in favor of the president of the board of fund commissioners, payable out of the current appropriation made by the general assembly for the state interest fund or state sinking fund, as the case may be; and if there is not sufficient money in the treasury belonging to such funds to pay such warrant, then the deficiency shall be paid out of any other moneys in the treasury belonging to the general revenue fund. The warrant, so drawn, shall be delivered to the state treasurer, who shall transmit the amount of money therein specified to the state's fiscal agent, with instructions to place such money to the credit of the board of fund commissioners for payment of interest, or principal, of the bonded indebtedness of the state."

Therefore, since an appropriation of such funds is unnecessary for payment of the coupons in question, such payment may be made by the Fund Commissioners by drawing their requisition for the necessary amount and following the general procedure presented under Section 33.460, supra.

CONCLUSION.

It is the opinion of this department that the money in the State Road Bond Interest and Sinking Fund does not have to be appropriated by the Legislature prior to the payment of the principal and interest on any outstanding state road bonds and Fund Commissioners should follow the procedure set forth under Section 33.460, Vernon's Annotated Missouri Statutes, in the payment of said coupons.

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

ARH/mv