

COMPTROLLER AND BUDGET DIRECTOR:



The provisions of Article IV, Section 28, Constitution of Missouri, 1945, are applicable to the judiciary; and on each claim submitted for payment the Comptroller must certify it for payment and the Auditor must certify that the expenditure is within the purpose of the appropriation and that there is in the appropriation an unencumbered balance sufficient to pay it.

July 1, 1954

Honorable Newton Atterbury
Comptroller and Budget Director
Capitol Building
Jefferson City, Missouri

Dear Sir:

Your recent request for an official opinion reads as follows:

"We received your letter of February 3, 1954, giving us an opinion in regard to certification for payment by the Comptroller to cover various obligations incurred by the Supreme Court.

"We interpreted your conclusion and the four lines immediately preceding that conclusion to mean that:

- " (1) It was not necessary for the Supreme Court to purchase any items with the exception of paper, printing, and binding (about which you had previously ruled) through the State Purchasing Agent. That it was not the Comptroller's duty to preapprove and encumber any purchases, with the exception as above mentioned, before they were made and a State obligation incurred.
- " (2) That repairs or additions to the Missouri Supreme Court Building should be done on contract which was approved by the Director

Honorable Newton Atterbury

of Public Buildings prior to the start of the work and which are encumbered by the Comptroller at the time the approved contract is received.

"We were also interested in knowing if it was not a duty of the Comptroller's Office, as well as the Auditor's Office, as part of the condition of certifying for payment, that the payment itself be made out of the proper account. If our understanding is correct, it is the duty of the Comptroller's Office, as well as the State Auditor's Office to certify to the State Treasurer that the expenditure is within the purpose of the appropriation; that is, items that are in the wording of the appropriation itself and considered from the accounting standpoint that are clearly to be paid out of 'operation' or 'general expense' appropriation could not be paid out of 'additions, repairs, replacement' appropriation and vice versa. We believe the State Auditor agrees with this office in our opinion that it is the duty of both offices to see that payments are charged to the proper appropriation.

"The primary concern of this department and the Auditor's Office is what conditions must be satisfied before we draw and sign a warrant authorizing the State Treasurer to withdraw and pay from the treasury. In your opinion of February 3, 1954, we note that you made no reference to Article 4, Section 28, of the Constitution of Missouri, which reads as follows:

"Section 28. Withdrawals from treasury - limitations on authority to incur obligations - certifications by comptroller and auditor - expiration of appropriations. No money shall be withdrawn from the state treasury except by warrant drawn in accordance with an appropriation made by law, nor shall any obligation for the payment of money be incurred unless the comptroller certifies it for payment and the state auditor certifies that the expenditure is within the purpose of

Honorable Newton Atterbury

the appropriation and that there is in the appropriation an unencumbered balance sufficient to pay it. At the time of issuance each such certification shall be entered on the general accounting books as an encumbrance on the appropriation. No appropriation shall confer authority to incur an obligation after the termination of the fiscal period to which it relates, and every appropriation shall expire six months after the end of the period for which made.'

"We note Article 4, Section 28 makes no reference to departments and would seem to us to cover all payments made by the State without regard to origin. Your opinion of February 3, 1954, had satisfied us insofar as our problem with the Supreme Court was concerned but we now have a letter of February 8, 1954, from Mr. John M. Holmes, Executive Secretary of the Judicial Conference of Missouri, bringing up additional questions based on his interpretation of your opinion. His letter reads as follows:

"Supplementing my letters of January 12, 20, 25 and 27, 1954, I have read the opinion of the Attorney General to Honorable Newton Atterbury, dated February 3, 1954, holding that Secs. 33.030 and 33.040 RSMo 1949 do not apply to the judicial branch of the government, which would include the Judicial Conference of Missouri. I would still like to have a conference with you and Mr. Atterbury at your earliest convenience, covering not only the matters raised in previous letters but the broader question of what jurisdiction remains. Here are a few of the questions that I have in mind:

- "1. Do we continue to send requisitions to your office for Personal Service, Operation, Additions, Repairs and Replacements, respectively, or do we make our requests direct to the State Treasurer for drafts covering payment of salaries and other expenditures?

Honorable Newton Atterbury

- "2. Do the technicalities pertaining to the purchase of paper still apply?
- "3. How are purchases involving printing and the charges and payments therefor to be handled?

"Other matters will probably occur to each of us before we have the conference."

"Mr. Holmes' interpretation of your opinion is so radically different from our understanding that we would sincerely appreciate it if you would add to your conclusion of February 3, an additional paragraph or so which would satisfactorily answer the three questions that Mr. Holmes has in mind, and further clarify, giving consideration to Article 4, Section 28, of the Constitution quoted above, the Comptroller's and Auditor's duties in certifying payments for the judicial branch."

Your request may be resolved into two questions:

(1) whether Article IV, Section 28, Constitution of Missouri, 1945, is applicable to the judicial branch of the state government, and (2) who is the final arbiter over disputes in classification of claims under the appropriations specified by the Legislature.

The Constitution of Missouri, 1945, by Article IV, Section 23, requires the Legislature to distinctly specify the amount and purpose of appropriations as follows:

"The fiscal year of the state and all its agencies shall be the twelve months beginning on the first day of July in each year. The general assembly shall make appropriations for one or two fiscal years, and the 63rd General Assembly shall also make appropriations for the six months ending June 30, 1945. Every appropriation law shall distinctly specify the amount and purpose of the appropriation without reference to any other law to fix the amount or purpose."

(Emphasis ours)

Honorable Newton Atterbury

Article IV, Section 28, Constitution of Missouri, 1945, requires the comptroller to perform certain duties before any claim against the state is paid.

"No money shall be withdrawn from the state treasury except by warrant drawn in accordance with an appropriation made by law, nor shall any obligation for the payment of money be incurred unless the comptroller certifies it for payment and the state auditor certifies that the expenditure is within the purpose of the appropriation and that there is in the appropriation an unencumbered balance sufficient to pay it. At the time of issuance each such certification shall be entered on the general accounting books as an encumbrance on the appropriation. No appropriation shall confer authority to incur an obligation after the termination of the fiscal period to which it relates, and every appropriation shall expire six months after the end of the period for which made."

The separation of the state government into three branches is provided by Article II, Constitution of Missouri, 1945:

"The powers of government shall be divided into three distinct departments--the legislative, executive and judicial--each of which shall be confided to a separate magistracy, and no person, or collection of persons, charged with the exercise of powers, properly belonging to one of those departments, shall exercise any power properly belonging to either of the others, except in the instances in this Constitution expressly directed or permitted."

Although there is provision for separation of the government into three branches, i.e., the executive, legislative and judicial, these three branches do not exist in a vacuum, but they are integrated into a complete scheme of state government.

Honorable Newton Atterbury

The Legislature is the traditional keeper of the purse, and is given by the Constitution the power to appropriate money, and to specify the purposes for which such money may be expended. The Constitution contemplates the control of the expenditure of the money appropriated by the Legislature to be vested in the executive branch of government, and provides for a comptroller who will examine each claim and give his certification as to its validity. The Constitution further provides for an auditor, and requires that he determine the existence of a proper appropriation.

The Constitution having given to the Comptroller the duty of ascertaining the validity of an appropriation, and given to the Auditor the duty of certifying that the expenditure is within the purpose of the appropriation, we must conclude that those officers must perform said duties on all claims presented, and that their determination should be the final one subject only to review by the Courts. To hold otherwise and state that the legislature and judiciary could determine whether each claim submitted was within a certain appropriation would nullify the effect of this constitutional provision.

CONCLUSION

It is, therefore, the opinion of this office that the provisions of Article IV, Section 28, Constitution of Missouri, 1945, are applicable to the judiciary; and that on each claim submitted for payment the Comptroller must certify it for payment and the Auditor must certify that the expenditures is within the purpose of the appropriation and that there is in the appropriation an unencumbered balance sufficient to pay it.

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

Very truly yours,

JOHN M. DALTON
Attorney General

FMG:lvd