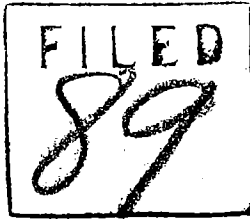


CONSTITUTIONAL LAW: Secs. 4.510 and 4.520 of S.C.S.H.C.S.H.B. No. 4,  
APPROPRIATIONS: 69th General Assembly, Second Extra Session,  
appropriating monies for personal services for  
employees of Missouri Conservation Commission, but excepting salary  
increases, violates Sec. 23, Art. 3, Mo. Const. 1945, as appropriation  
measure containing legislation. Unconstitutional portion may be elimin-  
ated without causing both sections to fall.



May 29, 1958

Honorable William E. Towell, Director  
Missouri Conservation Commission  
Monroe Building  
Jefferson City, Missouri

Dear Mr. Towell:

This opinion is rendered in reply to your inquiry reading as follows:

"Sections 4.510 and 4.520 of Senate Committee Substitute for House Committee Substitute for House Bill No. 4, as passed by the 69th General Assembly and signed by the Governor, contain appropriations for the Conservation Commission for the period beginning July 1, 1958 and ending June 30, 1959. The first named Section is appropriation of monies from the Conservation Commission Fund; while Section 4.520 is from the General Revenue Fund specifically for forestry purposes. An additional appropriation for capital improvements from the Conservation Commission Fund is contained in House Bill No. 11.

In House Bill No. 4, after the item Personal Services, the Legislature has inserted the words "except salary increases." I have been informed by the State Comptroller that without an official opinion from your office, or a court decision to the contrary, he cannot certify a payroll containing salary increases for this department after July 1, 1958. Section 42 of Article IV of the Constitution of Missouri states that the Conservation Commission shall fix the salaries of its employees.

On behalf of the Conservation Commission, I respectfully request an official opinion from your office as to the legality of this legislative action. This opinion is requested both

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with reference to the Conservation Commission Fund in Section 4.510 and the General Revenue Fund in Section 4.520."

The appropriation measure referred to in the above request for this opinion must be a reference to the appropriation measure of identical description passed at the Second Extra Session of the 69th General Assembly of Missouri.

Section 4.510 of the appropriation measure being considered is in the following language:

"There is appropriated out of the State Treasury, chargeable to the Conservation Commission Fund, including but not limited to funds received from federal or other cooperating agencies for wild-life and forest conservation, Four Million Eighty-two Thousand Sixty-four Dollars (\$4,082,064), for the use of the Conservation Commission, for the period beginning July 1, 1958 and ending June 30, 1959, as follows:

Personal Service except salary increases.....	\$2,427,064
Additions.....	155,000
Repairs and Replacements.....	330,000
Operation.....	<u>1,170,000</u>
Total from Conservation Commission Fund.....	\$4,082,064"

Section 4.520 of the appropriation measure being considered is in the following language:

"There is appropriated out of the State Treasury, chargeable to the General Revenue Fund, Three Hundred Thousand Dollars (\$300,000), for the use of the Division of Forestry, for the period beginning July 1, 1958 and ending June 30, 1959 as follows:

Personal Service, except salary increases.....	\$ 55,120
Additions.....	55,270
Repairs and replacements.....	64,610
Operation.....	<u>125,000</u>
Total from General Revenue Fund.....	\$300,000"

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Section 42, Article 4, Missouri's Constitution of 1945, in treating of the personnel of the Conservation Commission of Missouri, provides:

"The commission shall appoint a director of conservation who, with its approval, shall appoint the assistants and other employees deemed necessary by the commission. The commission shall fix the qualifications and salaries of the director and all appointees and employees, and none of its members shall be an appointee or employee."

The self-enforcing character of the constitutional provisions quoted above is reflected in the following language of Section 44, Article 4, Missouri's Constitution of 1945:

"Sections 40-43, inclusive, of this article shall be self-enforcing, and laws not inconsistent therewith may be enacted in aid thereof. All existing laws inconsistent with this article shall no longer remain in force or effect."

Section 23, Article 3, Missouri's Constitution of 1945, provides:

"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 foregoing constitutional provision dealing with the subject and title of legislative acts reflects a change in form but not in substance from Section 23, Article 4, Missouri's Constitution of 1875, the latter provision having been construed by the Supreme Court of Missouri on several occasions. As a result of these decisions, it is well established in this State that the General Assembly cannot legislate by an appropriation act.

Did the 69th General Assembly of Missouri, in its Second Extra Session, attempt to improperly legislate in the appropriation measure in question by appropriating for "Personal Service, except salary

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increases," as such language is found in Sections 4.510 and 4.520 of Senate Committee Substitute for House Committee Substitute for House Bill No. 4?

A case disclosing facts bearing close analogy to the facts on which this opinion is based is State ex rel. Hueller v. Thompson, 316 Mo. 272, 289 S.W. 338, and it will be relied upon to rule the inquiry in this instance. In the Thompson case, supra, an appropriation measure was being considered which contained a section reading as follows:

"Sec. 100. Salary - how determined. - No salary for any official or employee, either elective or appointive, provided for by this appropriation act, shall be in excess of the salary provided by statutory law for such official or employee, and in all cases where the salary of any such official or employee is not definitely fixed by statutory law, no salary paid by virtue of this appropriation act shall be in excess of the salary paid to the officer or employee holding such position the previous biennium." (Underscoring supplied.)

In view of the fact that salaries for personal services of employees of the Missouri Conservation Commission are not set by statute but are within the power of the Commission under Section 42, Article 4, Missouri's Constitution of 1945, supra, it can readily be seen that for the Legislature to attempt, in an appropriation measure, to prohibit any salary increases would create a situation not unlike that found in State ex rel. Hueller v. Thompson, supra, where the Supreme Court of Missouri ruled the appropriation measure unconstitutional and void, and spoke as follows at 316 Mo. 272, 1.c. 277,278:

" \* \* \* Here we have an appropriation act which not only appropriates money for the various subjects embraced therein, but which attempts to fix and regulate all salaries affected by the act which either have not been fixed by any statute or not definitely fixed, which would include all salaries where the maximum alone was named. That the Legislature has the right by general statute to fix salaries, is beyond question, but has it the right to do so by means of an appropriation act? We think not.

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"As has been observed in well-reasoned cases, if the practice of incorporating legislation of general character in an appropriation bill should be allowed, then all sorts of ill-conceived, questionable, if not vicious, legislation could be proposed, with the threat, too, that if not assented to and passed, the appropriations would be defeated. The possibilities of such legislation and this court's condemnation thereof are well illustrated in the case of *State ex rel. Tolerton v. Gordon*, 236 Mo. 142, as well as the following cases from other States: *State ex rel. v. Carr*, 13 L.R.A. 177; *Com. v. Greg*, 29 Atl. 297.

"Our Constitution, Section 28, Article IV, is the one certain safeguard against such distracting possibilities and should be strictly followed. We hold, therefore, that Section 100 of the Appropriation Act, under our Constitution, is unconstitutional and void, and it follows that our peremptory writ of mandamus should be granted.

"The question remains, does the invalidity of said Section 100 render the entire Appropriation Act void? We hold that it does not. It is well settled that a legislative act may be void in part, leaving the remainder a good and valid statute where the part that is valid may be separated from the part that is void. [*State ex rel. v. Gordon*, 236 Mo. 1.c.170; *State ex rel. v. Taylor*, 224 Mo. 474.]"

In line with the reasoning found in the foregoing quotation from *State ex rel. Hueller v. Thompson*, supra, it follows that the language "except salary increases" found in the appropriation for "personal service" in Sections 4.510 and 4.520 of the appropriation measure being considered herein is a provision unconstitutional and void, but may be separated from the whole without causing the remaining portions of the appropriation measure to violate the true legislative intent to appropriate for personal services, an intent so obvious as to be unquestioned.

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CONCLUSION

It is the opinion of this office that language found in Sections 4,510 and 4,520 of Senate Committee Substitute for House Committee Substitute for House Bill No. 4, passed by the 69th General Assembly, Second Extra Session, appropriating for Personal Service of employees of the Missouri Conservation Commission, excepting salary increases, is unconstitutional and void and contravenes Section 23, Article 3, Missouri's Constitution of 1945, as an appropriation measure containing legislation. The unconstitutional portion of said measure may be eliminated without causing both sections to fall.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Julian L. O'Nealley.

Yours very truly,

John M. Dalton  
Attorney General

JLO:mc