

OPINION NO. 452 ANSWERED BY LETTER

November 28, 1961



Honorable Charles D. Trigg
Comptroller and Budget Director
State Capitol
Jefferson City, Missouri

Dear Mr. Trigg:

You have requested advice of this office concerning the validity of a certification of expenditures from the contingent fund of the House of Representatives which is attested by the assistant chief clerk acting in the absence of the chief clerk.

Section 21.220, RSMo 1959, provides that each house shall control its contingent expenses. It further provides that when any accounts properly chargeable to the House of Representatives are adjusted and allowed according to the rules of the House, a certificate shall be granted, signed by the speaker and attested by the chief clerk. The statute is silent as to the effect of such certificate. It is reasonable to assume, however, that upon the presentation of such a certificate to the comptroller, it serves as the equivalent of a claim or demand against the state chargeable to the contingent fund of the House, and that the comptroller may rely upon such certification. There is no provision in the statute which mandatorily requires the comptroller to issue a warrant for the amount set forth in the certificate upon its presentation. In our opinion, the certificate is for the purpose of furnishing prima facie evidence to the comptroller that the account in question is properly chargeable to the contingent fund and has been adjusted and allowed according to the rules of the House. Attention is called to the provisions of Section 33.140, RSMo 1959, which grants broad powers to the comptroller to examine into the correctness of any account.

Honorable Charles D. Trigg

Bearing in mind the purpose of the certificate, we do not believe that the statute would operate to invalidate every certificate which has not been attested by the chief clerk. If such construction were to obtain, it would mean that in the event of the death or incapacity of the chief clerk or his absence on an extended trip or if he were otherwise unavailable or unwilling to serve at any particular time, no claim properly chargeable to the contingent fund could be paid. It is unreasonable to assume that the Legislature intended any such result.

The rules of the House of Representatives provide for an assistant chief clerk. Under Rule 28, he is authorized to discharge the duties of the chief clerk in his absence. The word "absence" is not qualified in any manner, and in our opinion such word, as used in this connection, is synonymous with "nonpresence", whatever the cause of such nonpresence may be.

The words "chief clerk" as used in this statute are to be construed as referring to the person who at the time has the authority to perform the functions ordinarily performed by the chief clerk. It is our opinion, therefore, that a certificate, otherwise meeting the requirements of the statute, which is attested by the assistant chief clerk in the absence of the chief clerk is valid and that the comptroller may rely upon such a certificate in approving for payment expenditures so certified.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

JN:BJ