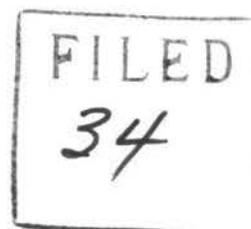


May 12, 1971

Answered by Letter - Nowotny  
OPINION LETTER NO. 34



Mr. Harvey D. Shell, P.E.  
Acting Executive Secretary  
Air Conservation Commission  
State of Missouri  
P. O. Box 1062  
Jefferson City, Missouri 65101

Dear Mr. Shell:

This is in reply to your request for an official opinion of this office, which request reads as follows:

"On August 14-16, 1970, the 1970 Governor's Youth Conference on Environmental Quality was held at the University of Missouri in Columbia. There were 270 delegates from 13 youth organizations, representing some 600,000 young Missouri citizens.

"The program was primarily educational in nature, and both Mr. Walter Nowotny, of your office, and myself participated. The delegates were enthusiastic, and the conference was a complete success.

"One of the conference recommendations was that it be an annual affair, and that the State of Missouri provide financial help. This, of course, would require an appropriation from the Legislature, and a constitutional question would probably be raised.

Mr. Harvey D. Shell

"Could a direct appropriation by the Legislature be legally made to the group? If such cannot, could the Missouri Air Conservation Commission contract such a conference through the contractual services portion of its operations budget?"

The first question is whether the legislature could appropriate money directly to the conference. First, we note that there are no statutes specifically authorizing or providing for this conference. Nor does the conference have the status of a state agency or political subdivision.

Such a conference is not public but is private in the sense that it is promoted and handled by private persons or organizations. It is a governor's conference only to the extent that the governor is lending the title of the office to the conference.

Therefore, it is our opinion that Section 38(a), Article III, Constitution of Missouri, prohibits the legislature from appropriating state funds to the conference. This provision reads as follows:

"The general assembly shall have no power to grant public money or property, or lend or authorize the lending of public credit, to any private person, association or corporation, excepting aid in public calamity, and general laws providing for pensions for the blind, for old age assistance, for aid to dependent or crippled children or the blind, for direct relief, for adjusted compensation, bonus or rehabilitation for discharged members of the armed services of the United States who were bona fide residents of this state during this service, and for the rehabilitation of other persons. Money or property may also be received from the United States and be redistributed together with public money of this state for any public purpose designated by the United States."

We also direct your attention to State ex rel. Garth et al. v. Switzler, 143 Mo. 287, where it was held that a tax which was to provide for the endowment of free scholarships to the state university was a purely private and not a public purpose and thus in contravention of the constitution.

Furthermore, assuming that such a purpose was public and not private, there is, as noted above, no legislation providing for

Mr. Harvey D. Shell

such a conference. Therefore, the mere appropriation of money would not be sufficient, since legislation of a general character cannot be included in an appropriation bill. State ex rel. Gaines v. Canada, 342 Mo. 121; and State ex rel Davis v. Smith, 335 Mo. 1069.

Your second question is whether the Missouri Air Conservation Commission could contract for such a conference.

In this regard, there is legislation of a public nature by which contracts for services may be made. The Commission has, among others, the following powers to implement the "Missouri Air Conservation Law", Chapter 203, RSMo (Section 203.050, RSMo 1969):

"1. In addition to any other powers vested in it by law the commission shall have the following powers:

\* \* \*

"(9) Retain, employ, provide for, and compensate, within appropriations available therefor, such consultants, assistants, deputies, clerks, and other employees on a full or part-time basis as may be necessary to carry out the provisions of this chapter and prescribe the times at which they shall be appointed and their powers and duties, and

"(10) Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise with any educational institution, experiment station, or any board, department, or other agency of any political subdivision or state or the federal government."

Thus, to implement and carry out the duties imposed by Chapter 203, the Commission has the power to retain or employ such personnel or contract for such services as necessary.

Since the conference is not an "educational institution, experiment station, or any board, department, or other agency of any political subdivision or state of the federal government", it is our opinion that the Commission could not contract with the conference for any purpose pursuant to Section 203.050.1(10).

However, it is our opinion that under Section 203.050.1(9) the Commission could retain the conference and participants of the

Mr. Harvey D. Shell

conference as consultants, if the conference is undertaking programs or activities which conform to the purposes of Chapter 203. A consultant is defined as:

"1: One who consults another 2: one who gives professional advice or services regarding matters in the field of his special knowledge or training, as a consulting physician or engineer, or, sometimes, a detective." Webster's New International Dictionary, Second Edition.

It is necessary to add that such consultants are not employees in the same sense as the regular members of your staff, and, for example, would not come under the merit system law.

Very truly yours,

JOHN C. DANFORTH  
Attorney General