

COMPENSATION:
APPROPRIATIONS:
DIVISION OF FINANCE:
CONSTITUTIONAL LAW:

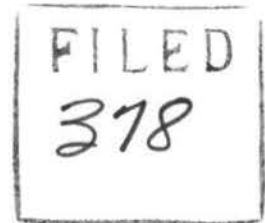
The Commissioner of Finance is to set the compensation of employees of the Division of Finance, other than the Commissioner and Deputy Commissioner, at amounts he shall

determine notwithstanding the language of Conference Committee Substitute for House Bill No. 4 of the 76th General Assembly purporting to limit the amount salaries may be increased.

OPINION NO. 378

July 21, 1971

Mr. H. Duane Pemberton
Commissioner of Finance
Division of Finance
12th Floor Jefferson Building
Jefferson City, Missouri 65101



Dear Mr. Pemberton:

This is in response to the request of your predecessor in office, C. W. Culley, for an opinion on the authority of the Commissioner of Finance to set the salaries of employees of the Division of Finance other than those of the Commissioner and the Deputy Commissioner. Section 361.090, RSMo 1969, provides as follows:

"1. The commissioner of finance shall receive an annual salary of eighteen thousand dollars and the deputy commissioner of finance shall receive an annual salary of sixteen thousand dollars. The salaries of the other employees of the division shall be fixed from time to time by the commissioner of finance.

"2. All of the salaries shall be paid in equal monthly installments out of the state treasury as provided by law.

"3. In addition thereto the actual and necessary traveling and other divisional or office expenses of the commissioner of finance, the deputy commissioner of finance, the other assistants herein provided for, examiners and other appointees of the commissioner of finance, provided by law, shall be paid out of the state treasury as provided by law."

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Looking at that section alone, it is quite clear that the salaries of employees of the Division of Finance, other than the Commissioner and Deputy Commissioner, are to be set by the Commissioner. However, an appropriation act for the fiscal year beginning July 1, 1971, Conference Committee Substitute for House Bill No. 4 of the 76th General Assembly provides in part as follows:

"There is appropriated out of the State Treasury, chargeable to the fund and for the purpose designated, for the period beginning July 1, 1971 and ending June 30, 1972, as follows:

* * *

"Section 4.420. To the Division of Finance	
"*Personal Service	\$896,387
"Additions	1,470
"Repairs and Replacements.	3,297
"Operation	250,000
	<hr/>
"From General Revenue.	\$1,151,154"

The asterisk included in that section refers to the end of the act wherein it is stated:

"*PERSONAL SERVICE (Non-Merit Employees)

"The intent of the Personal Service appropriation is to allow a 15% increase for employees receiving less than \$5400 per year; a 10% increase for employees receiving \$5400 to \$6888 per year; and a 5% increase for employees receiving \$6888 to \$8400 per year. All employees that are not statutory and that are not included in the above scale are allowed a \$300 per year increase only."

It would thus appear that the legislature in the appropriation act intended to restrict the power of the Commissioner of Finance to set the salaries of the employees of his division and the question becomes: Has the legislature passed a valid law for that purpose? We are of the opinion that the appropriation bill does not validly limit the power of the Commissioner of Finance under Section 361.090, RSMo 1969, to set the compensation to be received by

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the employees of the Division of Finance. Opinion No. 10 to I. T. Bode, Director of the Missouri Conservation Commission, June 11, 1953, a copy of which is enclosed, is directly in point. There we held:

"The law is well established in this state that the General Assembly cannot legislate by an appropriation act. Legislation of a general character cannot be included in an appropriation bill. To do so would violate the provisions of the Constitution of Missouri, namely, Section 23, Article III, . . . which . . . reads:

'Limitation of scope of bills -- contents of titles -- exceptions.-- 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.'

Consequently, the above-referred to opinion held that the legislature cannot in an appropriation act limit the power of the Conservation Commission to expend funds for certain purposes when the expenditure of funds for those purposes is otherwise within the Commission's authority. The fact that the Conservation Commission's power to expend moneys was provided for in the Constitution while the power of the Commissioner to set salaries is provided by statute is of no moment. The general rule still remains that the legislature cannot legislate in an appropriation act. State ex rel. Davis v. Smith, 75 S.W.2d 828, 830 (Mo. 1934); State ex rel. Gaines v. Canada, 113 S.W.2d 783, 790 (Mo. banc 1938), reversed on other grounds 305 U.S. 337. To find that the legislature in an appropriation act may limit the amount of compensation that may be paid to employees of the Division of Finance, notwithstanding the general law that the Commissioner is to make such a determination would be to find the legislature has legislated in an appropriation act in such a fashion as to repeal Section 361.090, RSMo 1969. Such a holding would run contrary to Article III, Section 23 of the Constitution of the state.

The authorities cited in Opinion No. 10, June 11, 1953, as well as that opinion itself, hold that valid and invalid portions of an appropriation bill are separable. Therefore, the part of Conference Committee Substitute for House Bill No. 4 of the 76th General Assembly purporting to limit the amount of increase in salary that

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may be provided for Division of Finance employees is invalid; but the portion of the bill setting forth the specific appropriation for the Division of Finance is valid.

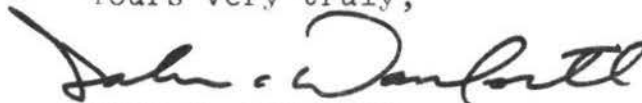
We hold that the Commissioner of Finance may set the salaries of employees of the Division of Finance, except for the Commissioner and Deputy Commissioner, without regard to the note at the end of Conference Committee Substitute for House Bill No. 4 of the 76th General Assembly limiting increases to certain state employees, so long as the total expenditure for salaries during the fiscal year does not exceed the amount for personal services set forth in Section 4.420 of the said bill.

CONCLUSION

It is the opinion of this office that the Commissioner of Finance is to set the compensation of employees of the Division of Finance, other than the Commissioner and Deputy Commissioner, at amounts he shall determine notwithstanding the language of Conference Committee Substitute for House Bill No. 4 of the 76th General Assembly purporting to limit the amount salaries may be increased.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Charles A. Blackmar.

Yours very truly,



JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 10
6-11-53, Bode