August 27, 1971

OPINION LETTER NO. 401
Answer by letter-Burns

FILED
401

Honorable Donald L. Manford
State Senator, 8th District
9409 Oakland
Kansas City, Missouri 64138

Dear Senator Manford:

This is in answer to your letter of recent date in which you state that you made a request for an official opinion from this office which was received July 19, 1971, relating to the Governor's power to veto certain "footnote" language found in most of the appropriation bills of the 76th General Assembly which we declined to answer on the ground that the request did not relate to your official duties as state senator. In your request you stated that our opinion was requested because one of your constituents submitted such a request to you. It is our view that a state senator has no official duty to advise one of his constituents as to legal matters and for that reason we declined to issue an official opinion.

It is our view, however, that the present request does relate to your official duties as state senator because the request is apparently being made to determine the validity of certain language in an appropriation act in relationship to your duties as state senator, and more particularly, as chairman of the Senate Appropriations Committee.

We believe that it is unnecessary to rule on the question as to whether or not the Governor has the power to veto "footnote" language found in most of the appropriation bills of the First Session of the 76th General Assembly. We adopt this view because it is our holding that such "footnote" language is unconstitutional, invalid and void because it is an attempt to enact general legislation in an appropriation act. The "footnote"

language to which you refer is, as we understand it, that found in practically all the appropriation acts of the First Session of the 76th General Assembly. We set out as illustrative the "footnote" language in Conference Committee Substitute for House Bill No. 4 of the First Session of the 76th General Assembly. Such "footnote" language provides as follows:

> "THE APPROPRIATIONS IN THIS BILL ARE THE TOTAL APPROPRIATIONS FOR EACH AGENCY OR PROGRAM FOR THE ENTIRE FISCAL PERIOD FROM JULY 1, 1971 THROUGH JUNE 30, 1972. AGENCY AND PROGRAM ADMINISTRATORS SHALL BUDGET THE APPROPRIATIONS HEREIN THROUGH A FULL 12 MONTH PERIOD. THE TOTAL APPROPRIATIONS IN THIS BILL ARE INTENDED TO BE EXPENDED THROUGH A FULL TWELVE MONTH PERIOD. DURING THE MONTH OF JULY, 1971, EACH AGENCY NAMED IN THIS BILL, SHALL SUBMIT BY ITS PROGRAM ADMINISTRATOR, TO THE COMMITTEE ON STATE FISCAL AFFAIRS, A TWELVE MONTH PLAN OF EXPENDITURES WHICH SHALL DETAIL ESTIMATED PLANNED EXPENDITURES DURING EACH MONTH OF THE FULL TWELVE MONTH PERIOD. NO EXPENDITURE SHALL EXCEED SUCH ESTIMATE, IN ANY ONE MONTH, BY AN AMOUNT GREATER THAN 15% OF SUCH ESTIMATE WITHOUT PRIOR APPROVAL OF THE COMMITTEE ON STATE FISCAL AFFAIRS.
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> "*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.
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> "**PERSONAL SERVICE (Merit System Employees) Merit System employees' salaries include the rates as provided in House Bill 16, 76th General Assembly. All employees that are not statutory and were not included in House Bill 16 are allowed a $300 per year salary increase."

We are enclosing Opinion No. 378 rendered July 21, 1971, to H. Duane Pemberton, which rules specifically as to the first asterisk footnote in House Bill No. 4, that is, the one relating to

personal service (non-merit employees) and holds that such provision is unconstitutional, invalid and void. We believe that the holding in such opinion is equally applicable to the other "footnote" language found at the end of such bill. It is our view that the language contained in such footnotes is clearly an attempt to enact general legislation in an appropriation act. We therefore hold it to be invalid and void.

We are also enclosing Opinion No. 10 rendered June 11, 1953, to I. T. Bode, referred to in the opinion, No. 378, 1971. Opinion No. 10 held that a provision in an appropriation act was void and invalid when such provision purported to prohibit expenditure for the rental or erection of a building where used as a central office building for the Conservation Commission and purported to prohibit the expenditure of any funds except in accordance with the budget regularly adopted by the Conservation Commission for a certain period.

We are enclosing Opinion No. 3 rendered April 16, 1953, to Newton Atterbury, which held invalid a provision in an appropriation bill, such provision purporting to prohibit the payment of more than one-half of wolf, coyote or wildcat bounties by the state in view of the fact that a state statute provided that the state should pay two-thirds of all such bounties.

We are enclosing an opinion rendered December 3, 1951, to Bert Cooper, holding that the passage of an appropriation act subsequent to the last date authorized for an appropriation act by a general statute of the state would be ineffective, invalid and void and that such an appropriation act would be a nullity.

We are enclosing an opinion rendered March 8, 1939, to Jewell Mayes, which holds that where a statute creating an office provides for payment for travel only within the state, an appropriation act providing for payment for travel for such officer within and without the state is invalid and void insofar as travel without the state is concerned because it is an attempt to pass general legislation in an appropriation act and is unconstitutional.

We are enclosing Opinion No. 89 rendered May 29, 1958, to William E. Towell, which holds that an appropriation act attempting to prohibit salary increases for employees is invalid, void and unconstitutional as an attempt to pass general legislation in an appropriation act.

It is apparent that this office has over a long period of years held that general legislation cannot be enacted validly in an appropriation act and that any attempt to do so renders void, invalid and nugatory the provisions of general legislation included in such appropriation act. In view of the fact that it is clear that the "footnote" language on most of the appropriation bills of the First Session of the 76th General Assembly is

unconstitutional, invalid and void because it is an attempt to enact general legislation in an appropriation act, we find it unnecessary to determine whether or not the Governor has the power to veto such "footnote" provisions.

Very truly yours,

JOHN C. DANFORTH
Attorney General

Enclosures: Op. No. 378
7-21-71, Pemberton

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

Op. No. 3
4-16-53, Atterbury

Op. No. 19
12-3-51, Cooper

Op. No. 57
3-8-39, Mayes

Op. No. 89
5-29-58, Towell