

APPROPRIATIONS: Language in an appropriation bill
CONSTITUTIONAL LAW: for "personal service" such as
Section 16.070, CCSHB No. 1016,
passed by the 77th General Assembly, which provides "Any monies
accrued due to vacancies or delayed pay increases must be lapsed."
is legislating in an appropriation bill and is unconstitutional
in violation of Article III, Section 23, Constitution of Missouri.
Such language is severable and the appropriated sums for personal
service are valid.

OPINION NO. 189

April 25, 1974



Honorable Keith J. Barbero
Representative, District 54
Room 101D, Capitol Building
Jefferson City, Missouri 65101

Honorable Steve Vossmeier
Representative, District 86
Room 414, Capitol Building
Jefferson City, Missouri 65101

Dear Representatives Barbero and Vossmeier:

This is in answer to your request for an official opinion on whether certain language which appears in several sections of appropriation bills now before the legislature is in violation of Article III, Section 23, Constitution of Missouri. The questioned language is as follows:

Any monies accrued due to vacancies or delayed pay increases must be lapsed.

A typical section where this language occurs is Section 16.070 of CCSHB No. 1016, passed by the 77th General Assembly, which section reads as follows:

Section 16.070. To the Office of Administration
Personal Service \$40,000.00
Any monies accrued due to vacancies or delayed
pay increases must be lapsed.

The first problem is to determine just precisely what is intended by this language. Giving the words used their normal meaning so as to give effect to the apparent intention of the legislature, it is apparent that the legislature is attempting to say, as

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to vacancies, that if in the course of the fiscal year a person holding a certain job or position should leave for any reason so that such position becomes vacant for some period of time, that such moneys not expended for that position cannot be expended for personal services for that agency, but must lapse. Likewise, as to delayed pay increases, if in the course of the fiscal year any employee is to receive a pay increase to begin on a certain date, but for some reason the pay increase begins at a later date, such sums of money which would have been paid for the pay increase which was delayed cannot be expended for personal services for that agency but must be lapsed. This language, therefore, is obviously an attempt to limit the expenditures in accordance with budget estimates submitted to the legislature, for it is only through the budget estimates that it could be determined what positions exist and at what salaries and pay increases, for the personnel division of the Office of Administration, since no such matters are set by statute.

Accordingly, the question is whether such language amounts to legislation in an appropriation bill which, of course, is prohibited by Article III, Section 3, Constitution of Missouri. See 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 1937), reversed on other grounds, 305 U.S. 337; and State ex rel. Hueller v. Thompson, 289 S.W. 338, 339, 341 (Mo. Banc 1926).

In the Hueller case the appropriation measure in question read as follows, l.c. 339:

"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." (Emphasis added).

The court held, l.c. 341:

". . . 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

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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."

In our view the principle in this case is applicable here in that the effect of the language used by the legislature is an attempt to fix salaries by position in the personnel division of the Office of Administration by the method of not allowing moneys to be used except in the exact manner presented in the budget estimates.

Also applicable here is Opinion No. 10 dated June 11, 1953, to I. T. Bode in which we held the following language in an appropriation bill to be unconstitutional as legislating in an appropriation bill:

" . . . provided further that no funds shall be expended from this appropriation except in accordance with a budget regularly adopted by the Conservation Commission; for the period beginning July 1, 1953 and ending June 30, 1955."

See also Opinion No. 378 dated July 21, 1971, to Pemberton where we held the Commission 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 an appropriation bill purporting to limit the amount salaries may be increased, and Opinion No. 401 dated August 27, 1971, to Manford holding that similar language in an appropriation bill purporting to limit the amount salaries may be increased was invalid and also language relating appropriations to the budget was invalid.

Accordingly, if there is an appropriation for "personal services" to a state agency such as the Office of Administration, the legislature cannot in the appropriation bill limit the use of a portion of the moneys to any one position or to any specific pay raise for a given period of time. To do so in an appropriation bill is legislating in violation of the constitutional prohibition against legislating in an appropriation bill.

Finally, you ask that if the questioned language is unconstitutional whether the entire appropriated item is void or whether only the specific language is void.

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To this question we again quote the Hueller case where the court stated, l.c. 341:

"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.
. . ."

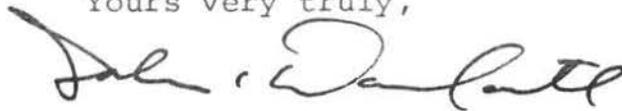
We also again refer you to Opinion No. 10 dated June 11, 1953, to Bode and Opinion No. 378 dated July 21, 1971, to Pemberton, where we held the invalid language severable. Therefore, the appropriated sums for personal service are valid.

CONCLUSION

It is the opinion of this office that language in an appropriation bill for "personal service" such as Section 16.070, CCSHB No. 1016, passed by the 77th General Assembly, which provides "Any monies accrued due to vacancies or delayed pay increases must be lapsed." is legislating in an appropriation bill and is unconstitutional in violation of Article III, Section 23, Constitution of Missouri. It is our further opinion that such language is severable and the appropriated sums for personal service are valid.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Walter W. Nowotny, Jr.

Yours very truly,



JOHN C. DANFORTH
Attorney General

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

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

Op. No. 401
8-27-71, Manford