



Honorables Keith J. Barbero and Steve Vossmeier

"Any balance remaining after completion of listed projects shall lapse unless additional expenditures are authorized by the Committee on State Fiscal Affairs and approved by the Commissioner of Administration."

Your first question therefore was intended to be whether this language is unconstitutional as legislating in an appropriation bill in violation of Article III, Section 23, Constitution of Missouri. It, of course, has been held that it is unconstitutional under Article III, Section 23, to legislate in an appropriation bill. 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.

To determine whether the quoted language is general legislation, the language used can be separated into two statements. It is first stated:

"Any balance remaining after completion of listed projects shall lapse . . ."

Giving effect to the ordinary meaning of the language used, this simply says for example in Section 9.020 that if \$50,000 is appropriated to re-equip the present laundry building of the Missouri School for the Deaf, and only \$40,000 is needed and expended for that purpose, that the \$10,000 remaining cannot be spent for any other purpose and must lapse.

Thus, \$10,000 could not be spent on another building of the Missouri School for the Deaf, or to construct a new laundry building for the Missouri School for the Deaf, or for a laundry building or any other building for any other state agency.

By itself, this language is innocuous and amounts to mere surplusage since as a matter of law the \$10,000 cannot be spent for any other purpose than that expressed, that is to re-equip the present laundry building of the Missouri School for the Deaf. Article IV, Section 28, Constitution of Missouri; and see State ex rel. Cason v. Bond, 495 S.W.2d 385 (Mo.Banc 1973).

However, this seemingly innocuous statement of the law is followed by:

". . . unless additional expenditures are authorized by the Committee on State Fiscal Affairs and approved by the Commissioner of Administration."

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This language obviously is an attempt by the legislature in this appropriation bill to empower the Committee on State Fiscal Affairs and the Commissioner of Administration to amend the purpose of an appropriation. In other words, the legislature has attempted to delegate to a legislative committee and a member of the executive branch the power to spend appropriated funds contrary to the appropriation purpose.

This clearly would be violative of Article III, Section 23, as legislation in an appropriation bill and accordingly, such language is void.

That is not fully dispositive of the basic question however without determining the intent and validity of a provision of the Omnibus State Reorganization Act of 1974 (S.B. 1) which provides in Section 1.6 (2) as follows:

". . . The purpose of appropriations made to any department in the executive branch of government shall not be altered without the prior approval of the fiscal affairs committee and the concurrence of the commissioner of administration."

Having determined that the legislature cannot grant in an appropriation bill, the authority to the Committee on State Fiscal Affairs and the Commissioner of Administration to approve expenditures for purposes other than those given in the appropriation bill the question remains whether the legislature, in a general legislative bill can give such authority, and does this language so accomplish this purpose.

Although the language used is not that direct and explicit, so that there is an ambiguity concerning its meaning, the probable interpretation is that it is an attempt to so delegate to the committee and the Office of Administration the power to expend appropriated funds other than for the purpose expressed in any appropriation bill. Or, to state it another way, to delegate the authority to "alter" or "amend" appropriation bills. In purposes of the following discussion, we assume this is the meaning of the language.

Before answering this question as to Senate Bill No. 1, we refer you to Opinion No. 347, Cantrell, June 18, 1971, and Opinion No. 222, Bond, September 4, 1973, in which we held there was no authority of the Committee on State Fiscal Affairs to authorize expenditure of appropriated funds for other than the express purposes stated in the appropriation bills. Those opinions, of course, were issued prior to

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the enactment of Senate Bill No. 1 and were based on the analysis that there were no statutes giving the committee this power.

Thus, the question now, is the quoted language valid and binding? We think not.

Article IV, Section 28, Constitution of Missouri, provides:

"No money shall be withdrawn from the state treasury except by warrant drawn in accordance with an appropriation made by law, nor shall any obligation for that payment of money be incurred unless the commissioner of administration certifies it for payment and certifies that the expenditure is within the purpose as directed by the general assembly of the appropriation and that there is in the appropriation an unencumbered balance sufficient to pay it. At the time of issuance each such certification shall be entered on the general accounting books as an encumbrance on the appropriation. No appropriation shall confer authority to incur an obligation after the termination of the fiscal period to which it relates, and every appropriation shall expire six months after the end of the period for which made."

This language could not be more clear that appropriated funds can only be expended for the purposes stated in the appropriation bill itself. We find nothing in this language which permits the legislature to delegate the authority to the committee and the Commissioner of Administration to amend an appropriation act by expending monies other than for the stated purpose.

Furthermore, especially since this provision is self enforcing (see: State ex rel. Baird v. Holladay, 66 Mo. 385 (1877); and State ex rel. Missouri State Board of Agriculture v. Holladay, 64 Mo. 526 (1877)), we think this section prohibits such attempted delegation by the legislature.

What the legislature has thus attempted to do in Senate Bill No. 1 is, as stated above, to allow the committee and the Commissioner of Administration to amend an appropriation bill.

An appropriation bill is of course a law enacted by the General Assembly in virtually the same manner that all laws are enacted.

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Article III, Sections 21 through 33, Constitution of Missouri. We have held that the General Assembly has the right to amend an appropriation law. Opinion No. 88, Taylor, January 6, 1959. It is apparent, however, that any law, including an appropriation law, can only be amended by the legislature through the legislative process required by Article III, Sections 21 through 33.

Accordingly, it is also a violation of these provisions for the legislature to, by general legislation, give this legislative function, which only it constitutionally can exercise, to a legislative committee and a member of the executive branch.

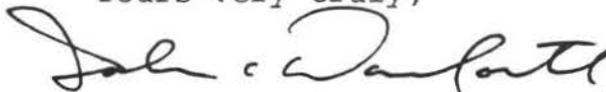
Having answered your first question in the negative, it is unnecessary to answer your second question.

#### CONCLUSION

It is the opinion of this office that the provision in the Omnibus State Reorganization Act of 1974 (S.B. 1) which purports to give authority to the Committee on State Fiscal Affairs and the Commissioner of Administration to "alter" the purpose of appropriations is unconstitutional in violation of Article IV, Section 28 and Article III, Sections 21 through 33, Constitution of Missouri. It is our further opinion that similar language in appropriation bills is also unconstitutional in violation of Article III, Section 23, Constitution of Missouri.

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

Yours very truly,



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Attorney General

Enclosures: Op. No. 347  
6-18-71, Cantrell

Op. No. 222  
9-4-73, Bond

Op. No. 88  
1-6-59, Taylor