

April 19, 1974

Honorable Robert E. Young
State Representative, District 136
Room 203C, State Capitol Building
Jefferson City, Missouri 65101



Dear Representative Young:

This is in answer to your request this morning for our views as to the limitations, if any, on the power of the General Assembly to appropriate for a governmental unit which has been transferred under the Reorganization Act by a type I transfer. A type I transfer is one described by Section 1.7(1) (a) of Senate Bill No. 1 of the 77th General Assembly, First Extraordinary Session, as follows:

"7.(1) To effect an orderly transition to the departments established by this act, each existing department, division, agency, board, commission, unit or program shall be transferred, as provided, by July 1, 1974.

(a) Under this act a type I transfer is the transfer to the new department or division of all the authority, powers, duties, functions, records, personnel, property, matters pending and all other pertinent vestiges of the existing department, division, agency, board, commission, unit, or program to the director of the designated department or division for assimilation and assignment within the department or division as he shall determine, to provide maximum efficiency, economy of operation and optimum service. All rules, orders and related matter of such transferred operations shall be made under direction of the director of the new department."

It is our view that any limitation or specific provision in any appropriation bill which nullifies or interferes with the

power given to the director of a division or department to carry out his authority under the provisions of Section 1.6(2) and Section 1.7(1)(a) would be invalid as violative of the provisions of Section 23 of Article III of the Constitution of Missouri, providing as follows:

"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."

The courts of this state have consistently held that under such provision general legislation cannot be passed 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); Attorney General's Opinion No. 378, January 21, 1971, rendered to H. Duane Pemberton. Therefore, if, as to any particular state agency an appropriation has the effect of nullifying the authority granted the director of the reorganized department to assimilate and assign "within the department or division as he shall determine, to provide maximum efficiency, economy of operation and optimum service. . . ." such limitation would be invalid and void under the Constitution. However, an appropriation to a state agency, although restricted to a particular program or function established by law, would not be invalid unless it had the effect of interfering with the director's authority under Section 1.6(2) and Section 1.7(1)(a) to establish the internal organization of the department and allocate and re-allocate duties and functions and to assimilate and assign in such a manner as to promote efficiency and economy of operation.

To answer your question more fully would require detailed study and analysis of each section of the many appropriation bills now pending to determine which sections, if any, constitute legislation in an appropriation act contrary to the provisions of the Constitution. It is impossible for this office to accomplish that analysis today as you have requested. Further, it is the policy of this office not to render an opinion on numerous appropriation items that may be pending at any particular time in the General Assembly.

Very truly yours,

JOHN C. DANFORTH
Attorney General