

Laws of Missouri, 1933, page 469, provides:
Section 1.

"There is hereby appropriated out of the state treasury, chargeable to the general revenue fund, the sum of Two Hundred Fifty Thousand Dollars (\$250,000), or so much thereof as may be ordered by the Governor, to be used in the manner authorized and directed by the Governor, together with funds advanced through the Reconstruction Finance Corporation, or other agency of the Government of the United States of America, for the relief of citizens of the State of Missouri who are in need of aid by reason of being reduced to dire distress and want through unprecedented unemployment, and ruinously low prices of agricultural commodities: Provided, the expense of administration of the amount hereby appropriated shall be paid out of an appropriation made for that purpose, and shall not exceed the amount in such appropriation authorized.

Section 2.

There being no adequate law of this State authorizing and providing the relief authorized and provided by this act, an emergency is declared to exist within the meaning of the Constitution; therefore, this act shall take effect and be in force on and after date of its approval by the Governor."

This act was approved March 17th, 1933.

Laws of Missouri, 1933, page 141, Section 1a, provides:

"For emergency relief administration there is hereby appropriated out of the state treasury, chargeable to the general revenue fund for administration of emergency relief, the sum of Fifty thousand dollars or so much thereof as may be necessary for said purposes as follows:

For salaries of director, field representatives,
office secretary, and stenographers \$30,000.00

For general expenses, travel, office expenses including communication and incidental \$20,000.00

Total for emergency relief administration \$50,000.00"

This act was approved May 17th, 1933.

It is seen that the Legislature appropriated \$250,000.00, or so much thereof as may be ordered by the Governor, to be used in the manner authorized and directed by the Governor. Therefore, the administration of emergency relief is under the direction of the Governor and his Department. And the Legislature provided \$50,000.00 to pay for the expenses of administration of said fund.

In order for the Printing Commission to furnish paper and printing to the emergency relief administration it would have to be determined (1) if the emergency relief administration is within the provisions of Section 13799, R. S. Mo. 1929, and if it is, then (2) does the appropriation act (page 141) to said emergency relief administration include the payment for printing?

I.

Section 13799, R. S. Mo. 1929, provides in part as follows:

"Executive departments shall in this and other sections of this chapter be construed to mean both the heads of said departments and the subordinate branches thereof, the boards, commissions, bureaus and officers appointed by the heads of said departments except the boards of educational and eleemosynary institutions of the state."

It is our opinion that the emergency relief administration is a subordinate branch of the Governor's Department, hence, "all work to be executed for the executive departments shall be ordered through the commissioners of public printing, and a requisition shall be obtained in advance signed by the head of the department ordering such work and said requisition shall be approved by the commissioners of public printing in the same manner as that provided in section 13802 of this law respecting the examination of accounts." (Section 13799)

State ex rel. McKinley Publishing Co., v. Hackmann,
State Auditor, 314 Mo. 33.

II.

Article X, Section 19, of the Constitution of Missouri,
provides in part as follows:

"No moneys shall ever be paid out of the
treasury of this State, or any of the funds
under its management, except in pursuance of
an appropriation by law;"

Section 11421, R. S. Mo. 1929, provides as follows:

"No warrant shall be drawn by the auditor or
paid by the treasurer, unless the money has
been previously appropriated by law; nor
shall the whole amount drawn for or paid,
under any one head, ever exceed the amount
appropriated by law for that purpose."

In State v. Holladay, 65 Mo. 76, it was held that members
of the state board of equalization were not entitled to warrants
on the treasury, for service performed when there were no funds
appropriated for such purpose. The court said, page 77:

"No appropriation having been made by the
last General Assembly for payment of the
members of the State Board of Equalization
for services in the year 1876, and that made
by the preceding General Assembly for that
purpose having been exhausted, the Auditor
is not authorized to draw warrants on the
Treasury in their favor."

In State ex rel. v. Henderson, 160 Mo. 190, l. c. 213, the
court said:

"Not a dollar of the funds raised under this
act can be paid out of the Treasury without
an express statute of the State disbursing
it to such purposes as the Legislature may
devote it to."

In State ex rel. Hackmann, 207 S. W. 64, l. c. 65, the court said:

"Has the state board of equalization authority under the law to employ a stenographer at the expense of the state? If such board of equalization (hereinafter, for brevity, called simply the board) has any such authority, this authority must be bottomed on some statute. For it is fundamental that no officer in this state can pay out the money of the state, except pursuant to statutory authority authorizing and warranting such payment."

The appropriation act, page 141, Laws of Missouri, 1933, does not provide for printing and binding. The only provision for such would be embraced in the word "incidental". ("For general expenses, travel, office expenses, including communication and incidental")

The word "incidental" was defined in the case of The Robin Goodfellow. The Robin Gray. The Robin Hood., 20 F. (2d) 924, l. c. 925, as follows:

"'Incidental,' obviously, means depending upon or appertaining to something else as primary. 'Burrill's Law Dictionary defines "incident" as "belonging or appertaining to; following; depending upon another thing as more worthy. * * * A thing may be necessarily or inseparably incident to another, or usually so." Webster defines it thus: "Something necessarily appertaining to or depending on another, which is termed the principal." Thomas v. Harmon, 46 Hun (N. Y.) 75, 77.' 4 Words and Phrases, First Series, p. 3494.

Lord Dunedin, in *Trustee of Harbor of Dundee v. Nicol*, (1915) H. L. A. C. 550, said: 'Incidental, in my view means incident to the main purpose of the main business.'

Delivery of lumber is incidental to sale or traffic, the main object; and delivery may be made in any customary manner. If traffic is interstate, it must be shipped in the usual

and customary way. Loading lumber on a truck, a car, or a ship, for delivery in the usual way, is no doubt incidental to the business of trafficking in lumber; and the loading may be by the regular employees of the lumber company or by a special employee. Employing libelant to load its lumber in carrying forward its business in the lumber traffic by the lumber company, is not engaging in the business of stevedoring, even though a small per cent. (less than 4 per cent., I think the testimony shows) of the cargo did not belong to the charterer, but to others to whom space had been given."

III.

We conclude that in order for the emergency relief administration to carry out the purposes for which formed that it is necessary for it to have printing done, hence, the word "incidental" used in the appropriation act would include printing.

It is our opinion that the Printing Commission must furnish paper and printing to the emergency relief administration, subject, however, to the following: (1) That said printing be used in administering the fund appropriated for unemployment relief (page 469, Laws of Missouri, 1933) and for state purposes solely (not Federal), and (2) that the expense of printing be paid from that part of the appropriation, page 141, Laws of Missouri, 1933, to-wit:

"For general expenses, travel, office expenses including communication and incidental \$20,000.00"

Yours very truly,

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APPROVED: _____
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