APPROPRIATIONS: An Appropriation Act which fails to designate the fund from which it is payable should be paid out of general revenue.

August 11, 1943

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Hon. H. D. Elijah
Director of Livestock and Feed
Department of Agriculture
Jefferson City, Missouri

Dear Sir:

This is in reply to yours of recent date wherein you submit the following statement and request:

> "House Bill 419, Section 30A, appropriated to the State Department of Agriculture according to Article 18, Chapter 102, Revised Statutes of Missouri 1939, to be awarded as premiums made in connection with agriculture exhibits by members of boys' and girls' 4-H Clubs, vocational agriculture students, and Future Farmers of America, of Missouri, and State Breed Shows and Sales of beef cattle, dairy cattle, hogs, sheep, and poultry for encouraging the immediate production, distribution, and use of superior breeding stock for the years 1943 and 1944, the sum of $30,000.00.
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> "This Section does not state what fund this money was to be paid from. The State Department of Agriculture felt that it was from general revenue, since that was undoubtedly the intent of the Legislature.
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> "Will you please prepare a written opinion on this and send it to us at your earliest convenience?"

The Section of the Appropriation Act to which you refer in House Bill 419, Section 30A, reads as follows:

> "There is hereby appropriated to the State Department of Agriculture according to Article 18, Chapter 102, Revised Statutes of Missouri 1939, to be awarded as premiums made in connection with agriculture exhibits by members of boys' and girls' 4-H Clubs, vocational agriculture students, and Future Farmers of America, of Missouri, and State Breed Shows and Sales of beef cattle, dairy cattle, hogs, sheep, and poultry for encouraging the immediate production, distribution, and use of superior breeding stock for the years 1943 and 1944, the sum of $30,000.00."

From the reading of this Section and as stated in your request, the General Assembly failed to designate the fund to which this appropriation should be charged.

Section 19 of Article X of the Constitution which controls the General Assembly and specifies the requirements of an appropriation act reads 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; nor unless such payment be made, or a warrant shall have issued therefor, within two years after the passage of such appropriation act; and every such law, making a new appropriation, or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such sum or object. A regular statement and account of the receipts and expenditures of all public money shall be published from time to time."

The part of this Section which pertains to your question is that the Act shall distinctly specify the sum appropriated and the object to which it is to be applied. Referring to the Appropriation Act, we think that it complies with the provisions of said Section 19. The only question left then is what fund should it be charged to in the absense of any designation by the General Assembly. In construing appropriation acts, the rule is that they should receive a strict construction but not such a construction as would make meaningless the act of the General Assembly if it is possible to give such act a construction which would give it force and effect. In the case of State ex rel. State Tax Commission v. Smith, State Auditor, 66 So. 61, l.c. 64, the Supreme Court of Alabama announced the principle which is applicable here as follows:

> "While appropriation bills should be construed without liberality toward those who claim their benefits, they should not be so strictly construed as to defeat their manifest objects."

In examining the State Budget Act, we think that the above Appropriation Act is in compliance with the State Budget Act. Another principle should be applied in construing acts of the General Assembly which is stated in Graves v. Little Tarkio Drainage District No. 1, 134 S. W. (2d) 70, l.c. 78:

> "* * * *'It is an elementary and cardinal rule of construction that effect must be given, if possible, to every word, clause, sentence, paragraph, and section of a statute, and a statute should be so construed that effect may be given to all of its provisions, so that no part, or section, will be inoperative, superfluous, contradictory, or conflicting, and so that one section, or part, will not destroy another. Sutherland on Statutory Construction (2d Ed.) 731, 732, Sec. 380. Moreover, it is presumed that the Legislature intended

> every part and section of such a statute, or law, to have effect and to be operative, and did not intend any part or section of such statute to be without meaning or effect.'* * * * *"

Coming now directly to your question, we find that in Vol. 59 C. J., page 232, para. 378, a principle announced which is applicable to the question here under consideration:

> "* * * *Disbursements for a purpose for which a special fund has been created or set up must be made from such fund rather than from the general funds of the state; but appropriations not specifically made payable out of a special or particular fund are payable only from the general fund. * * * *" (Emphasis ours.)

In the case of Ingram v. Colgan, 106 Calif. 113, the Supreme Court of that state at l.c. 117 in considering a question similar to the one here under consideration said:

> "The true test as to whether any particular language in an act is sufficient to make an appropriation is here found. 'To an appropriation, within the meaning of the constitution, nothing more is requisite than a designation of the amount and the fund out of which it shall be paid.' If the amount be certain, one of the reasons for the constitutional requirements is complied with, in that the people are enabled to determine how much of their money is to be devoted to the named purpose. The designation of the fund likewise enables the people to see how much of the moneys set apart to a particular fund is to be drawn from it and used for the specific end. But under our system, countenanced by the custom of years, it is not necessary in all cases that the act in terms should name the fund. The general fund itself

> is defined to be 'the moneys received into the treasury, and not specifically appropriated to any other fund.' (Pol. Code, sec. 454.) From these moneys all appropriations are paid which are not made payable out of any other especially named fund."

In searching through our statutes, we fail to find where our lawmakers have defined the general fund or general revenue but as a matter of practice, we think the same definition of general fund has been applied in this state as was applied under the code in California.

Also in Miller v. Childers, State Auditor, et al., 238 Pac. 204, the Supreme Court of Oklahoma in considering a question similar to the one here under consideration made the following statement, l.c. 207:

> "In 36 Cyc. page 892, paragraph C, the author collects authorities on the point, and says that: ' Nor need the statute designate the fund out of which the money is drawn.'
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> "In the early California case of Proll v. Dunn, 80 Cal. 220, 22 P. 143, the court gives an analysis of the question which we approve, and which, because the question is presented in this case for the first time in this jurisdiction, we extensively quote. The court said:
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> "'Neither the Constitution nor the Code requires that an appropriation act shall specify the fund out of which the appropriation shall be paid, nor is it usual in appropriation acts to do so. If such a specification is required, the wheels of the government ought long since to have stopped, for out of many acts which we have examined, including the general appropriation bills for the current and past years, we find none which make such designation. It has become and is the custom in this

state, of very general, but not universal, application, to use the phrase "appropriated out of any money in the treasury not otherwise appropriated;" but it seems to be mere custom, not founded upon any constitutional or other legislative requirements. And we learn from the argument that the comptroller interprets that phrase to mean "out of the general fund." We know of no law which authorizes such an interpretation. On the contrary, it would seem that everything authorized by law to be paid out of the state treasury is payable out of the general fund, if not specially made payable out of some specific fund, as the "school fund," the "interest and sinking fund," and the like. The truth is, there are not many separate funds in the treasury, but there are many appropriations, and most of the latter are payable out of the same fund--the general fund.'

"The Constitution of Colorado required that every act making an appropriation where the money appropriated was not actually in the treasury should specify the revenue of the particular fiscal year out of which the appropriation was to be paid. An act was passed by the Colorado Legislature which did not specifically state the particular fiscal year out of which the appropriation was to be paid, but the same could be determined by implication, and the Supreme Court of Colorado, in Goodykoontz v. People, 20 Colo. 374, 38 P. 473, held:

"'Every legislative act making an appropriation, where the money appropriated is not actually in the treasury, should specify the revenue of the particular fiscal year out of which the appropriation is to be paid; but an act which does not definitely specify such revenue

is not void, provided such revenue can, from the language and purposes of the act, be ascertained with reasonable certainty.'

"The Constitution of Nevada is similar to that of Oklahoma with relation to the appropriation of money, and in State v. Westerfield, 23 Nev. 468, 49 P. 119, the Supreme Court of Nevada held that where an appropriation was made from the wrong fund, but was an appropriation proper for the Legislature to make, that the same was valid, and should be paid from the general fund, saying:

"'We hold that the Legislature has made a valid appropriation for the payment of the salary in question, and that the same is payable, out of the general fund in the state treasury, the same as the salary of the Governor and most of the other state officers, and the same as other appropriations in which no specific fund is named. Section 19 of Article 4 of the Constitution provides: "No money shall be drawn from the treasury but in consequence of appropriations made by law." It will be observed that it is not required that the fund out of which the appropriations are to be made shall be named in the appropriation act. Usually, if not always, other acts or the Constitution show what fund the money appropriated is to be drawn from.'"

In our research of the Missouri decisions, we fail to find where a question similar to yours has been before the court. However, we think that the authorities hereinbefore cited should be followed.

CONCLUSION.

From the foregoing, it is the opinion of this Department that the appropriation contained in Section 30A of

House Bill 419 should be paid out of general revenue.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

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