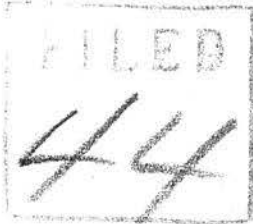


APPROPRIATIONS:  
GENERAL ASSEMBLY:  
CONSTITUTION:  
LEGISLATURE:

Where the General Assembly makes appropriations in all of the preceding categories, an appropriation in a particular category set forth in Section 36, Article III, Constitution of Missouri, is not unconstitutional because such appropriation is contained in a bill which is finally passed in advance of the final passage of the bill or bills containing the appropriations in the preceding categories.



March 19, 1958

Honorable Richard H. Ichord  
State Representative  
Texas County  
Jefferson City, Missouri

Dear Mr. Ichord:

This refers to your letter of March 12, 1958, requesting an opinion of this office concerning the question whether, in view of Section 36, Article III, Constitution of Missouri, the proposed appropriation for county aid road purposes now contained in House Bill No. 4 will be constitutional if it is enacted as a part of that bill.

Section 36, Article III, Constitution of Missouri, reads as follows:

"All revenue collected and money received by the state shall go into the treasury and the general assembly shall have no power to divert the same or to permit the withdrawal of money from the treasury, except in pursuance of appropriations made by law. All appropriations of money by successive general assemblies shall be made in the following order:

"First: For payment of sinking fund and interest on outstanding obligations of the state.

"Second: For the purpose of public education.

"Third: For the payment of the cost of assessing and collecting the revenue.

"Fourth: For the payment of the civil lists.

"Fifth: For the support of eleemosynary and other state institutions.

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"Sixth: For public health and public welfare.

"Seventh: For all other state purposes.

"Eighth: For the expense of the general assembly."

The proposed appropriation for county aid road purposes comes within the seventh category listed in the foregoing constitutional provision, namely, "For all other state purposes." House Bills Nos. 1 to 6 appear to be designed primarily to make appropriations in the first to sixth categories, respectively, with House Bill No. 4 being the bill designed to make appropriations in the fourth category, namely, "For the payment of the civil lists." However, it may be noted that in the various bills there is considerable intermingling of appropriations in the seventh category with appropriations in other categories, and that this is particularly true of House Bill No. 4.

The number of the bill containing the county aid road appropriation obviously cannot affect the constitutionality of such appropriation. The real question presented is whether the appropriation will be constitutional if it remains in House Bill No. 4 and that bill is finally passed by the General Assembly in advance of final passage of any of the other bills mentioned above. Stated another way, the question is whether an appropriation falling within the seventh category is constitutional if it is enacted as a part of a bill which is passed prior to the passage of the bills containing the appropriations for the preceding six categories.

The above-quoted provisions of the present Constitution were based upon Section 43, Article IV, of the Constitution of Missouri adopted in 1875, which read as follows:

"All revenue collected and moneys received by the State from any source whatsoever, shall go into the treasury, and the General Assembly shall have no power to divert the same, or to permit money to be drawn from the treasury, except in pursuance of regular appropriations made by law. All appropriations of money by the successive General Assemblies shall be made in the following order:

"First: For the payment of all interest upon the bonded debt of the State that may become due during the term for which each General Assembly is elected.

"Second: For the benefit of the sinking fund, which shall not be less annually than two hundred and fifty thousand dollars.



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"Third: For free public school purposes.

"Fourth: For the payment of the cost of assessing and collecting the revenue.

"Fifth: For the payment of the civil list.

"Sixth: For the support of the eleemosynary institutions of the State.

"Seventh: For the pay of the General Assembly and such other purposes not herein prohibited, as it may deem necessary; but no General Assembly shall have power to make any appropriation of money for any purpose whatsoever, until the respective sums necessary for the purposes in this section specified have been set apart and appropriated or to give priority in its action to a succeeding over a preceding item as above enumerated." (Under-scoring ours.)

It will be noted that the language underscored in the preceding quotation does not appear in the corresponding provision of the present Constitution.

A review of the debates of the Constitution Convention which drafted the 1875 Constitution, in which a provision of this kind first appeared, indicates that the purpose of the provision was to make sure that money was appropriated for the purposes specifically mentioned, and particularly to require appropriations for the payment of outstanding obligations of the state, so as to protect the credit of the state.

There was little discussion of this provision in the debates of the Constitutional Convention which drafted the present Constitution, and the only thing which may be pertinent here was the following statement by Senator McReynolds, who handled the matter on the floor of the Convention (Debates of the 1943-44 Constitutional Convention, page 4002):

"Mr. President, the first paragraph[sentence] of that section is a copy of the present Constitution. The eight subdivisions or allotments for the appropriations of funds represents some change and some additions from the present section. The present section contains seven sections[classifications]. This one as re-written contains eight and is changed from the original one by the addition of, I think, public health and public welfare. There was

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some question in the Committee as to the wisdom and propriety of the particular section or the necessity of it. However, the majority of the members of the Committee thought it represented an excellent safeguard and since a provision of that kind was in the present Constitution they were inclined to retain it, and for that reason, with the rewriting of the classifications to conform to the present conditions, the old section has been retained. I move its approval."  
(Words in brackets supplied.)

In State ex rel. Fath v. Henderson, 160 Mo. 190, 60 S.W. 1093, l.c. 1096, decided in 1901, the Missouri Supreme Court expressed its views as to the purpose of the provision contained in the 1875 Constitution as follows:

"\* \* \* \*We think the purpose of the framers of the constitution, among possibly others, was to prevent an adjournment of the legislature without making the necessary appropriations for the support of the state government and its various educational, penal, and eleemosynary institutions, and the prompt payment of its obligations as they matured, and in this manner prevent extravagant and extraordinary appropriations in excess of the estimated and probable revenues of the state.\* \* \*"

While the constitutional provision in question may be susceptible of such construction, it does not expressly provide that bills containing appropriations falling within the various categories must be finally passed by the General Assembly in the precise order set forth therein, and the language is not so clear and unambiguous as to prevent some more reasonable interpretation. In this connection, it is significant that the present provision does not contain the more explicit language of the 1875 Constitution which provided that "no General Assembly shall have power \* \* \* \*to give priority in its action to a succeeding over a preceding item as above enumerated."

It is elementary that constitutional restrictions upon legislative powers must be construed strictly in favor of the power of the General Assembly and that they should not be deemed to apply if any reasonable doubt exists as to their repugnancy to the act under review. McGrew v. Missouri Pacific Railway Co., 230 Mo. 496, 132 S.W. 1076; Ludlow-Saylor Wire Co. v. Wollbrinck, 275 Mo. 339, 205 S.W. 196; State v. Wilson, 265 Mo. 1, 175 S.W. 603; State ex rel. Heimberger v. Board of Curators of University of Missouri, 268 Mo. 598, 188 S.W. 128.

In construing a constitutional provision, one should not attribute



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to it a meaning, not necessarily required by its language, which is unreasonable and impractical in result and is not essential to its purposes. To hold in this instance that, even though appropriations are made for all of the listed categories, the order of passage of the appropriation bills is controlling, and may invalidate some appropriations, would give effect to form rather than substance, without serving any real purpose. It would be impractical and contrary to established and orderly legislative procedure, would make the validity of appropriations a matter of chance, and would render invalid many appropriations made in the past.

Under such an interpretation, it would be necessary to rigidly limit each bill to appropriations within a particular category. This has not been done in the past; and, incidentally, if this were undertaken, there could be substantial differences of opinion as to the categories in which numerous appropriations belong. In any event, any such rigid classification of appropriations would result in piecemeal consideration of closely related matters.

Under existing circumstances, it is obviously impossible for the General Assembly to complete its consideration of one appropriation bill before it starts on another; and, where several bills are under consideration at the same time, the precise order in which they are finally passed may be a matter of chance and one which is difficult to control. Even if the order of passage could be controlled, this would result only in delay, with bills as to which there were no disagreements being held up while differences as to others were resolved.

The real purpose of the constitutional provision is to prevent a General Assembly from making appropriations in the lower categories and failing to make appropriations in the preceding ones. Where a General Assembly makes appropriations in all of the categories before it completes its work, the purpose of the provision has been accomplished, regardless of the order in which the bills containing the appropriations are passed. The constitutional provision should be so construed as to accomplish this purpose and not to impose technical requirements which are not necessary to accomplishment of that purpose.

#### CONCLUSION

It is the opinion of this office that, where the General Assembly makes appropriations in all of the preceding categories, an appropriation in a particular category set forth in Section 36, Article III, Constitution of Missouri, is not unconstitutional because such appropriation is contained in a bill which is finally passed in advance of the final passage of the bill or bills containing the appropriations in the preceding categories.

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In answer to the specific question presented, it is the opinion of this office that the proposed appropriation for county aid road purposes, which falls within the seventh category, will not be invalid, because of the aforesaid constitutional provision, if it remains in House Bill No. 4 and that bill is finally passed in advance of final passage of the bills containing appropriations in the first six categories, assuming that the latter bills also are passed.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. John C. Baumann.

Yours very truly,

JCB:mw

John M. Dalton  
Attorney General