

APPROPRIATIONS: Section 44a of Article IV of the Constitution constitutes appropriation for payment of interest on road bonds irrespective of legislative action.

December 10, 1936.

12-10

FILED  
66

Hon. Richard R. Nacy  
State Treasurer  
Jefferson City, Missouri

Attention of Mr. H.S. Johnson, Chief Clerk.

Dear Sir:

We are in receipt of your letter of December 8, 1936, requesting an opinion of this office on the following matter:

"On page 8, Sec. 4, 1935 Session Acts the following appropriation was made. Interest on Road Bonds falling due in 1935 - 1936- - - - - \$8,756,700.00.

It has just been called to my attention that Auditor's warrant had been issued against this appropriation for \$36,450.00 in excess of said appropriation, and that drafts had been issued for the same payable to our fiscal agent, the Chase National Bank, New York City, before it was discovered by this department that the appropriation was overdrawn, and draft had been mailed.

Will you kindly give me your official opinion whether or not payment should be stopped on this draft."

From subsequent oral conferences the issue is limited to the simple proposition as to whether or not a legislative appropriation is a prerequisite to the payment of interest on road bonds falling due in 1935 and 1936.

I.

No specific legislative appropriation necessary to authorize payment of interest on state road bonds issued pursuant to Section 44a of Article IV of the Constitution.

The bonds upon which the interest is sought to be paid were issued pursuant to Section 44a of Article IV of the Constitution of the State of Missouri. A portion of that article reads as follows:

"All state motor vehicle registration fees, license taxes or taxes authorized by law on motor vehicles (except the property tax on motor vehicles and state license fees or taxes on motor vehicle common carriers) and also all state taxes on the sale or use of motor vehicle fuels authorized by law, less the expense of the collection of such registration fees and license taxes on motor vehicles and taxes on the sale or use of motor vehicle fuels and less also the cost of maintaining the State Highway Department and the State Highway Commission and the cost of administering and enforcing any state motor vehicle law or traffic regulation shall, after the issuance of any of said bonds and so long as any of said bonds herein authorized remain unpaid, be and stand appropriated without legislative action, to the payment of the principal and interest of the said bonds and for that purpose shall be credited to the State Road Bond Interest and Sinking Fund provided by law.\*\*\*\*\*"

By the foregoing provision, the Constitution has by specific direction, appropriated the revenue derived from the sale of motor vehicle license tags and from the motor vehicle fuel tax to the payment of the principal and interest on the bonds issued pursuant to that section, after payment of certain charges against those funds. We understand that there are

ample funds available and that the problem is not complicated by a shortage of revenues for payment of the cost of collecting this revenue, the maintenance of the State Highway Department and the State Highway Commission, the maintenance of the State Highway Patrol, or the meeting of the payments of principal and interest upon the bonded debt. It is our view that this constitutional appropriation is sufficient to authorize the payment of the maturing interest irrespective of the appropriation contained in Section 4 of the appropriation bill found on page 8 of the Laws of Missouri of 1935. The general rule is thus stated in 59 Corpus Juris 237, Section 381, as follows:

"Constitutional provisions are not to be construed as themselves making appropriations unless they are clearly so intended. Self-executing provisions of the constitution specifically appropriating particular funds or sums for designated purposes exempt the matters therein dealt with from the necessity of legislative appropriation established by other provisions of the constitution, and the constitutional provisions are themselves a sufficient appropriation for the purposes and to the extent comprised within their terms; and no legislation may be enacted such as will impair the operation of a constitutional appropriation."

Cases from several jurisdictions are cited in support of the portion of the above statement holding the constitutional provisions are themselves sufficient appropriation when the purpose to appropriate is clear. Our Section 44a of Article IV is plain in its terms. The purpose to appropriate is clear. However, we have a direct statement on this proposition by our Supreme Court in the case of State ex rel. McKinley Publishing Company vs. Hackmann, State Auditor, 282 S. W. 1007. In this case the position was taken by the plaintiff that Section 44a of Article IV of the Constitution amounted to a constitutional appropriation to the State Highway Department

of all funds necessary for the maintenance of the Department. Although this contention was overruled by the Supreme Court the Court stated relative to a construction of Section 44a of Article IV as follows on page 1013:

"This provision makes no attempt to appropriate, without legislative action, the money to pay the maintenance expense of the highway commission. It does appropriate without further legislative action that portion of the money received from automobile license fees which remains after deducting the cost of collecting the tax and maintaining the highway commission, and it appropriates the remainder to the payment of the principal and interest of certain bonds.\*\*\*\*\*"

Section 19, article 10, of the Constitution of Missouri, expressly provides that no money shall be paid out of the State Treasury, except in pursuance of an appropriation by law. This section controls, unless modified by a later constitutional provision. It is true that section 44a, supra, does modify it as to that portion of the automobile license tax to be paid upon the principal and interest of said bonds, but that is the only modification, and there is nothing in section 44a which in any manner conflicts with, or prevents the provisions of, section 19, supra, from controlling with reference to all moneys paid out of the state treasury for the support and maintenance of the highway commission. It thus clearly appears that that portion of the license tax which is to be paid out of the state treasury for the expenses of maintaining the highway commission must, under the express provisions of the Constitution (section 19, supra), be first appropriated by act of the Legislature.

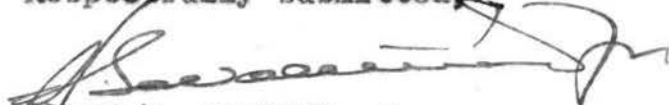
The above construction of the section was given by the General Assembly, succeeding the adoption of section 44a of article 4, supra (Laws 1921, 1st Ex. Sess. p. 104). That was the act providing for the levying, collecting, and disbursement of the present motor vehicle license taxes or registration fees. Section 28 of that act provided that all such fees or taxes 'shall be made payable to the state treasurer.' and, after road bonds are issued, said fees shall be deposited to the credit of a fund provided for in the Constitution."

We believe that these statements of the Supreme Court as to the construction of this section of the constitution should be followed in the instant case and in themselves supply the answer to your inquiry.

CONCLUSION.

It is therefore the opinion of this office that interest on State road bonds issued pursuant to Section 44a of Article IV of the Constitution of Missouri may be paid pursuant to the constitutional appropriation found in that section authorizing the payment of such interest and that such constitutional appropriation is not limited by the legislative appropriation contained in Section 4, page 8, Laws of Missouri 1935.

Respectfully submitted,



HARRY G. WALTNER, Jr.,  
Assistant Attorney General

APPROVED:

J. E. TAYLOR  
(Acting) Attorney General

FRANKLIN E. REAGAN,  
Assistant Attorney General