

APPROPRIATIONS: Money cannot lawfully be transferred from a general fund to a specific fund unless authorized by statute.

November 26, 1935.



Mr. David Perry,
Linneus, Missouri.

Dear Sir:

This department is in receipt of your recent request for an opinion on the following question:

"Can the John J. Pershing Appropriation made by the Legislature be paid out of the General Revenue Fund?"

Laws of Missouri, 1935, Section 2, page 83, of an Act creating Pershing Memorial Park and authorizing the transfer thereof to the United States Government for a National Park, provides as follows:

"The State Park Commission, consisting of the Governor, Attorney-General and the Commissioner of Game and Fish (or the latter by such title as he shall hereafter be known), is hereby authorized and empowered to purchase, in the name of the State of Missouri, a desirable tract of land in the immediate vicinity of the Town of Laclede, Linn County, Missouri, as a site of a park to be known as the Pershing Memorial State Park. The said Park Commission shall spend such moneys as may hereafter become available in putting the land authorized to be purchased hereby in such condition as to render it desirable and usable as a state park, and is further authorized to receive contributions, appropriations or awards from individuals, societies, or the United

States Government for such purpose. The land herein authorized to be purchased, however, to be in one tract or body."

Section 4 of the above Act authorizes an appropriation for the creation of the park thus:

"There is hereby appropriated out of the State Treasury, chargeable to the State Park Fund, or any other fund that may hereafter be made available, the sum of forty thousand dollars (\$40,000.00) for the purchase of said tract of land and for expense that may be incurred in rendering said tract usable as a state park."

We are asked to determine whether the authorization appropriated out of the State Treasury, "chargeable to the State Park Fund, or any other fund that may hereafter be made available", can be so construed as to authorize an appropriation out of the "General Revenue Fund".

The case of *Whitehead v. Farmers' Fire & Lightning Mut. Ins. Co.*, 60 S. W. (2d) 65, 69, 227 Mo. App. 891, the court in holding that the whole statute must be looked to in the construction of any part of it, said:

"The cardinal rule of statutory construction is that the intention of the Legislature in enacting it must be ascertained (59 C. J. p. 948), and the statute, as a whole, should be looked to in construing any part of it (59 C. J. pp. 993, 994, 995)."

The statute expressly states that the appropriation is chargeable to the "State Park Fund" and adds, "or any other fund that may hereafter be made available". It is upon the latter clause that our decision must turn. In other words, we must determine what "other fund" the Legislature had in mind. In ascertaining such intention we are directed to look to the statute as a whole, and an examination of Section 2, supra, discloses that by "other fund" is meant "contributions, appropriations or awards from individuals, societies, or the United States Government for such purpose".

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Section 43, Article 4, and Section 19, Article 10, of the Missouri Constitution pertain and are applicable to the subject of appropriations and are respectively as follows:

Section 43, Article 4:

"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. * * *"

Section 19, Article 10:

"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 * * *."

59 C. J., page 232, makes the following statement with reference to appropriation of funds by the Legislature:

"Money cannot lawfully be transferred from the general fund to a separate or specific fund except as may be authorized by statute."

CONCLUSION

Finding no statute authorizing the transfer of money from the "General Revenue Fund" to the "State Park Fund", we are of the opinion that the General Pershing Appropriation as set out in Section 4, supra, cannot be paid out of the "General Revenue Fund".

Respectfully submitted,

JOHN W. HOFFMAN, Jr.,
Assistant Attorney General.

APPROVED:

ROY MCKITTRICK,
Attorney General.

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