COUNTY FOREIGN INSURANCE TAX FUND: Sec. 38, Laws of Mo. 1933, p. 85 held unconstitutional.

August 21, 1933.

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Hon. William H. Sapp,
Prosecuting Attorney,
Columbia, Missouri.

Dear Sir:

This department acknowledges receipt of your letter of August 5 in which you request an opinion from this department on the constitutionality of Sec. 38 of House Bill No. 649, Laws of Missouri 1933, p. 85.

Sec. 38 provides as follows:

> '"There is hereby appropriated out of the state treasury, chargeable to the 'County foreign insurance tax fund', for the years 1933 and 1934, the sum of three million dollars ($3,000,000) or so much thereof as may be available to be apportioned among the different counties in the state, and the city of St. Louis, as provided by Section 5982 of the Revised Statutes of Missouri, 1929. Provided, that the board of directors or the board of education of any school district in this state may, during the school years 1933-34 and 1934-35, notwithstanding the provisions of Section 18a of Committee Substitute for Senate Bills 237, 269, 322, 323, 326 and 327, passed by the 56th General Assembly, transfer to the teachers' fund any portion or all of said moneys received under the provisions of this section that may be needed in order that the district may have an eight-month term of school.'"

(Emphasis Ours)

Section 18a of Committee Substitute for Senate Bills 237, etc. (Laws 1931, p. 345), the prior existing statute mentioned in the proviso above, passed by the Legislature in 1931, sets up a

"free text book fund" in each school district and provides that when money is appropriated under the provision of Section 5982 R.S. Mo. 1929, that money shall be paid into the free text book fund of each district. The section further directs the Board of Directors of each district to purchase free text books for the use of pupils in the elementary grades when such action is directed by a vote of the qualified voters of the district. This said section, 18a, further provides that if free text books have not been authorized by a vote of the district, or if there remains a balance in the fund after the purchase of free text books, the sum not utilized shall be transferred to the Teachers' Fund.

The question as to the validity of the proviso in Section 38 (Laws of 1933, page 85) arises when the Board of Directors of a school district attempts to transfer moneys apportioned under the provisions of Section 5982 R.S. Mo. 1929, (which Act merely provides for the apportionment of the county insurance tax fund to the several counties), notwithstanding the fact that the voters of the district have directed that such money be used to purchase free text books. In such a case the action of the Board of Directors would be legal, if the proviso mentioned above is a valid enactment.

It is the opinion of this department that Section 38, Laws of Missouri 1933, p. 85, is unconstitutional for the reasons which will presently appear:

I.

Section 19, Article X of the Constitution of the State of Missouri provides:

> "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."

In the case of State ex rel Broadwater v. Seibert, 99 Mo. 122,

The General Assembly, by Act approved May 21, 1889 (Acts 1889, p. 6, Sec. 5, Sub. 7), appropriated $7500 "to pay the amount due for work and improvements on the walls and capitol grounds", and "to pay balance due under contract made for the enlargement of the capitol building, which balance was a part of the former appropriation of $250,000 which lapsed and reverted to the treasury", reappropriated the sum of $21,854.06. The court held that the object of the reappropriation must be determined by the terms of the Act making it and resort cannot be had for that purpose to the first Act. The court said (l.c. 125):

> "It is obvious, from the reading of the foregoing provision, that a reappropriation of an unexpended balance of a former appropriation is upon the same footing as the original appropriation as to the necessity of stating the object for which such reappropriation is made. ****"

Section 38, Laws of Mo. 1933, p. 85 is therefore unconstitutional when measured by the yard stick of the Seibert Case, supra, for the reason that no specific object of the reappropriation is stated. It is discretionary with the board of directors or the board of education as to the manner in which they will expend the money. In addition thereto, Section 38, supra, attempts to determine the object of the appropriation by reference to Section 18a, Laws of Mo. 1931, p. 345. This is clearly unconstitutional.

II.

There are two possible constructions of Section 38, Laws of Missouri 1933, p. 85:

(a) That it is an amendment to Section 18a, Laws of Missouri 1931, p. 345;

(b) That it is a separate Act pertinent to the appropriation made in the section of which it is a part.

If Section 38, supra, should be construed as an amendment to Section 18a, supra, it is clearly unconstitutional, for it does not comply with the mandate contained in Section 34, Art. IV of the Constitution of the State of Missouri, which is as follows:

> "No act shall be amended by providing that designated words thereof be stricken out, or that designated words be inserted, or that designated words be stricken out and others inserted in lieu thereof; but the words to be stricken out, or the words to be inserted, or the words to be stricken

> out and those inserted in lieu thereof, together with the act or section amended, shall be set forth in full as amended."

A mere reading of Section 38 is sufficient to convince that it does not in any way conform to Section 34, Article IV of the Constitution of the State of Missouri.

If, on the other hand, Section 38, supra, should be construed as being a separate Act, the unconstitutionality of the law is still apparent.

Article III of the Constitution of Missouri is the usual American constitutional clause relating to distribution of powers. Section 57 of Article IV of the Constitution of Missouri, relating to initiative and referendum reaffirms the provision of Article III as far as legislative powers are concerned, with an amendment that is unimportant here. The construction which the courts of this state have placed upon these provisions relating to distribution of powers fully warrants our conclusion that the proviso of the law of 1933 is unconstitutional, should it be considered as not amendatory of the laws of 1931.

We find in State v. Field, 17 Mo. 529 what is practically an identical case. In the Field Case an Act of the legislature attemped to give to the County Court of any county the power to suspend the operation of a law relating to the mode of recovery of certain penalties. The court in that case held that under the provision of Article III of the Constitution, the legislature could not delegate a discretion to an administrative body for the purpose of investing the administrative body with the power to suspend the effect of a previously enacted statute. The situation here is identical in that the proviso of the law of 1933 attempts to vest in an administrative body the power to suspend the effect of Section 18a of Committee Substitute for Senate Bills 237, etc. (Laws of 1931, p. 345) setting up the free text book fund.

In the case of Merchants Exchange v. Knott, 212 Mo. 616, l.c. 641, 111 S.W. 565, the court held:

> "We are of opinion that the power to bind and loose, to inaugurate or suspend the operation of the law, to say when and where it is law is of necessity an inherent and integral part of the law-making power, not to be delegated to, and wielded by, any commission."

III.

If under Section 18a, Laws of Mo. 1931, p. 345, the voters of a district have directed that the money received under the provisions of Sec. 5982 R.S. Mo. 1929 be used to purchase free text books, then, in that event, Sec. 38, Laws of Mo. 1933, p. 85 is unconstitutional for the reason that it attempts to apply the appropriation to purposes other than those for which it was obtained. Sec. 20, Article X of the Constitution of the State of Missouri provides:

> "The moneys arising from any loan, debt or liability, contracted by the State, or any county, city, town or other municipal corporation, shall be applied to the purposes for which they were obtained, or to the repayment of such debt or liability, and not otherwise."

The question is whether or not the voters of a district, having voted to use the appropriation to purchase free text books, have assumed a liability such as is contemplated in Sec. 20 of Article X of the Constitution.

The word "liability" is defined in Balentine's Law Dictionary as follows:

> "As a legal term the word means that condition of affairs which gives rise to an obligation to do a particular thing to be enforced by action."

Words and Phrases (2d) Vol. III, p. 98, under the heading of "Liability", says:

> "'Liability' in its broadest and most comprehensive use includes any obligation one is bound in law or justice to perform, and is synonymous with 'responsibility'; in a more restricted and perhaps in its popular sense, it means that which one is under obligation to pay to another. State ex rel City of Milwaukee v. Milwaukee Electric Ry. & Light Co., 129 N.W. 623, 630, 144 Wis. 386, 140 Am. St. Rep. 1025. *****"

Words and Phrases, (3d) Vol. IV, p. 866 says:

> "' The word 'liability', as used in Section 3, Art. VIII of the Constitution, is to be read, construed, and accepted in the usual and ordinary sense in which that term is commonly employed, and when so used,

> means and signifies the state of being bound or obligated in law or justice to do, pay, or make good something. Feil v. City of Coeur d'Alene, 129 P. 643, 649, 23 Idaho 32, 43 L.R.A. (N.S. 1095.'"

Words and Phrases (3d) Vol. IV, p. 868, under "Debt", says:

> "'The word 'liability' as used in Const., Art. VIII, Chap. 3, limiting county and municipal indebtedness, has its ordinary meaning, and signifies the state of being bound in law and justice to pay an indebtedness or discharge some obligation. Boise Development Co. v. City of Boise, 143 P. 651, 535, 26 Idaho 347. ****"

Cooley in his work "Constitutional Limitations", Eighth Edition, Vol. I, p. 130, says:

> "'In interpreting clauses we must presume that words have been employed in their natural and ordinary meaning. As Marshall, Ch. J., says: 'The framers of the constitution, and the people who adopted it must be understood to have employed words in their natural sense, and to have intended what they have said.' This is but saying that no forced or unnatural construction is to be put upon their language; and it seems so obvious a truism that one expects to see it universally accepted without question; but the attempt is made so often by interested subtlety and ingenious refinement to induce the courts to force from these instruments a meaning which their framers never held, that it frequently becomes necessary to re-declare this fundamental maxim. Narrow and technical reasoning is misplaced when it is brought to bear upon an instrument framed by the people themselves, for themselves, and designed as a chart upon which every man, learned and unlearned, may be able to trace the leading principles of government.'"

In the light of the definitions as heretofore set out, and in view of the construction to be placed upon words as used in the Constitution, we are of the opinion that the "liability" assumed by the district when they voted to have free text books for the district is such a "liability" as is contemplated in Sec. 20, Article X of our Constitution. That being so, the remaining question that presents itself for our consideration is whether or not a diversion of the moneys, such as is contemplated by Sec. 38, Laws of Missouri 1933, p. 85, is unconstitutional.

Corpus Juris, Vol. 61, p. 1521, declares the following principle of law:

> "Taxes which are set apart by the constitution of the state for particular uses cannot be diverted by the legislature to any other purpose, and neither can funds derived from taxes levied and collected for particular purposes be legally utilized for, or diverted to, any other purpose, some constitutional provisions expressly so providing. ****"

In the case of Burmank, etc. v. Douglas, (Wash.), 255 Pac. 360, the court held:

> "The general rule is that where money is raised and is payable out of a special fund, the fund in question shall not be called upon to pay any other or different charges except those for which it is credited."

In the case of In Re Opinion of the Judges, 240 N.W. 600, the court said:

> "'****And with particular reference to the possibility of employing moneys (either state or county) now on hand or to accrue under present levies, for the furnishing of feed or making of feed loans, article 11, Sec. 8, Constitution of this state, provides: 'No tax shall be levied except in pursuance of a law, which shall distinctly state the object of the same, to which the tax only shall be applied.'
>
> Under this section we are of the opinion that moneys now on hand (or hereafter to be received) as the result of payment of

> taxes (whether motor vehicle fuel tax or other tax) already levied, and the proceeds of which have already been appropriated, must be applied to the purposes for which they were levied and to which they have already been appropriated, and we think the same could not now be diverted, even by legislative action, to any other purpose. See Opinion of the Judges, 50 S.D. 324, 210 N.W. 186; White Eagle Oil & Refining Co. v. Gunderson, 48 S.D. 608, 205 N.W. 614, 43 A.L.R. 397.
>
> This same constitutional provision would prevent the diversion of money in existing sinking or other funds raised by taxation from the specific purposes of such funds to the making of feed loans, even though the money is now on hand and the expenditure thereof is not immediately required for the particular object for which it was levied and appropriated."

Therefore, it is the opinion of this department that Sec. 38, Laws of Mo. 1933, p. 85, is unconstitutional when viewed in the light of Sec. 20, Article X of the State Constitution for the reason that it attempts to apply the appropriation to purposes other than those for which it was obtained.

IV.

Section 28, Article IV of the Constitution of the State of Missouri provides:

> "No bill (except general appropriation bills, which may embrace the various subjects and accounts for and on account of which moneys are appropriated, and except bills passed under the third subdivision of section forty-four of this article) shall contain more than one subject, which shall be clearly expressed in its title."

Sec. 38, Laws of Mo. 1933, p. 85 is found under the general Act under the heading

> " APPROPRIATIONS: Money for Support of State Government, State Fair, Boards, Bureaus and Commissions for the years of 1933 and 1934."

Section 38, supra, is entitled: "County foreign insurance tax fund". Under the above general heading the Legislature not only appropriated $3,000,000 as provided by Sec. 5982, R.S. Mo. 1929, but in addition thereto sought to repeal the provisions of Section 18a, Laws of Mo. 1931, p. 345, and give to the board of directors or to the board of education the power to transfer to the teachers' fund any portion or all of said moneys received under the provisions of this section. This is pure unadulterated legislation and is violative of Section 28, Article IV of the Constitution of the State of Missouri.

The general rule of law on this subject is well stated in the case of State ex rel School District v. Hackmann, 292 Mo. 27, l.c. 31:

> "'Section 28 of Article IV of the Constitution provides that 'No bill *** shall contain more than one subject, which shall be clearly expressed in its title.' It is uniformly held that this provision is to be liberally construed; that its purpose is to have the title indicate the general contents of the act; that if the contents of the act fairly relate to and have a natural connection with the subject expressed in the title, they fall within the title. On the other hand, provisions incongruous in their subject-matter may not be enacted in the same act. The subject must be single. In addition to being single, the subject must be clearly expressed in the title; the title must not mislead as to the contents of the act.'"

However, the application of this general rule to a case such as we have here under consideration is most emphatically set out in the case of State ex rel Hueller v. Thompson, 316 Mo. 272, l.c. 277, as follows:

> "An appropriation bill is just what the terminology imports and no more. Its sole purpose is to set aside moneys for specified purposes, and the lawmaker is not directed to expect or look for anything else in an appropriation bill except appropriations. As to these he

is charged by the Constitution to look and watch for two things: (a) the various subjects of the bill, and (b) the account or accounts for which the payment of the State's moneys are being set apart. The same section and article of the Constitution forbids any bill, except as in the Constitution provided, to contain more than a single subject and this must be clearly expressed in the title. The exceptions are two, one of which is appropriation bills, and the other is such legislation as is provided for and limited by the third division of Section 44 of Article IV of the Constitution. (Art. IV, secs. 28 and 44). Here we have an appropriation act which not only appropriates money for the various subjects embraced therein, but which attempts to fix and regulate all salaries affected by the act which either have not been fixed by any statute or not definitely fixed, which would include all salaries where the maximum alone was named. That the Legislature has the right by general statute to fix salaries, is beyond question, but has it the right to do so by means of an appropriation act? We think not.

As has been observed in well-reasoned cases, if the practice of incorporating legislation of general character in an appropriation bill should be allowed, then all sorts of ill-conceived, questionable, if not vicious, legislation could be proposed, with the threat, too, that if not assented to and passed, the appropriations would be defeated. The possibilities of such legislation and this court's condemnation thereof are well illustrated in the case of State ex rel Tolerton v. Gordon, 236 Mo. 142, as well as the following cases from other states: State ex rel v. Carr, 13 L.R.A. 177; Com. v. Greg, 29 Atl. 297."

CONCLUSION.

Therefore, from a consideration of the foregoing, it is the opinion of this department that Section 38, Laws of Missouri 1933, p. 85, is unconstitutional for the reason that it violates

(1) Section 19, Article X of the Constitution of the State of Missouri;

(2) Section 34, Article IV of the Constitution of the State of Missouri;

(3) Article III, and Section 57, Article IV of the Constitution of the State of Missouri;

(4) Section 20, Article X of the Constitution of the State of Missouri;

(5) Section 28 of Article IV of the Constitution of the State of Missouri.

Respectfully submitted,

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

APPROVED:

ROY McKITTRICK,
Attorney General.

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