

APPROPRIATIONS: Director of Medical Licensure -- No appropriation having been made, cannot be ascertained at this time out of which of the two funds his salary may be paid.

5-9
May 6, 1935.



Hon. Forrest Smith
State Auditor
Jefferson City, Missouri

Dear Mr. Smith:

We wish to acknowledge your letter of recent date wherein you state as follows:

"The appropriation of the State Board of Health is divided into two classes: the Board of Health Fund consisting of certain fees earned by the department, and the State Department of Health Fund which consists of the appropriation from the state revenue.

I would like an opinion from your department on the following question:

From which of these two funds should the salary of the Director of Medical Licensure be paid?"

In an opinion rendered by this Department under date of November 20, 1934, addressed to the President of the State Board of Health, a copy of which we are enclosing, we ruled as follows:

"By virtue of the foregoing statutes authorizing the establishment of such divisions as the Board may deem necessary from time to time, the division

of medical licensure has been established and under the provision of Section 9112 heretofore referred to it is specifically provided that the State Board should have general supervision over the subject matter of registration of practitioners of medicine and surgery.

It is therefore inescapable that the State Board would have authority to employ a director of medical licensure and to establish the amount of compensation he is to receive as well as to prescribe the other rules and conditions under which he is to be employed."

We direct your attention to the following appearing in the Constitution of Missouri:

Article IV, Section 20, provides as follows:

"The General Assembly elected in the year one thousand eight hundred and seventy-six shall meet on the first Wednesday after the first day of January, one thousand eight hundred and seventy-seven; and thereafter the General Assembly shall meet in regular session once only in every two years; and such meeting shall be on the first Wednesday after the first day of January next after the elections of the members thereof."

Article X, Section 19, provides 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 Supreme Court in the case of State ex rel. Missouri State Board, etc. v. Holladay, State Auditor, 64 Mo. 526, 1. c. 528, said:

"And commenting on the same section, Mr. Mudd said: 'Now, the object of the committee was to restore to the general revenue the balances of the appropriations not applied at the end of every two years, so that each session of the General Assembly should make appropriations for the term during which they were elected, and not leave those appropriations open to be drawn upon at any time, which have been made by preceding General Assemblies. It was to close up the books at least once every two years, and then if any appropriation be made, let it be made by the General Assembly then in session.'"

Regular appropriations for the support of the state government are made biennially, or every two years. All moneys remaining at the end of the two years go back into the general revenue. As appropriations for the support of the state government for the years 1933-34 have expired by law,

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it will be seen that such are no longer of any force and effect. Therefore, recourse must be had to the appropriation for 1935-36. At this date the Legislature has not appropriated any moneys either to the State Board of Health Fund or to the Department of Health Fund. Consequently, we cannot say out of which of the two funds the Director of Medical Licensure shall be paid. However, we invite your attention to a perfected bill now before the 58th General Assembly, namely, House Bill No. ~~356~~, page 18, which provides in part as follows:

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"STATE BOARD OF HEALTH-
DEPARTMENT OF HEALTH-

SECTION 22. There is hereby appropriated out of the state treasury, chargeable to the State revenue fund, the sum of Two Hundred Fifty Two Thousand dollars (\$252,000) to be expended for the following purposes, in the amounts hereinafter stated:

A. Personal Service:

Health Commissioner's Office:

The salary of the secretary, state health commissioner, secretary to the state health commissioner, director of licensure, supply clerk, multi-graph operator and janitor."

If the above appropriation act is enacted and approved as above written, it would be our opinion that the salary to be paid to the Director of Medical Licensure would be paid out of the above fund. ✓

approved June 10th 1935

Yours very truly,

James L. HornBostel
Assistant Attorney-General.

APPROVED:

ROY MCKITTRICK
Attorney-General

JLH/NW/EG