June 12, 1935.   7-2-35

Hon. Louis V. Stigall,
Chief Counsel,
State Highway Department,
Jefferson City, Missouri.


Dear Sir:


This department is in receipt of your letter of
June 1 requesting an opinion concerning the validity of cer-
tain language in an appropriation bill enacted by the 58th
General Assembly of the State of Missouri. Section 1 of said
Act (House Bill No. 277) provides as follows:

> "A.   Personal Service:
>
>> The per diem of the commis-
>> sioners, the salaries of the
>> chief engineer, assistant chief
>> engineer, secretary, chief counsel,
>> not to exceed four attorneys,
>> bureau heads, assistant bureau
>> heads, division engineers, assist-
>> ant division engineers, special
>> engineers, clerks, stenographers,
>> bookkeepers, janitors and other
>> employees...........$1,294,357.00."

The point involved is as to the constitutional validity
of the limitation "not to exceed four" as provided in this
section.

Section 8098, R.S. Mo. 1929 provides:

> "The state highway commission shall
> select and fix the salary, which salary
> shall not exceed $6,000 per year of a
> chief counsel who shall possess the same
> qualifications as judges of the supreme
> court and who shall serve at the pleasure
> of the commission and shall appear for

represent the commission in all
actions and proceedings under this
article or any other law administered
by the highway commission, or in
any decision, order or proceeding
of the commission, or of the chief
engineer and shall commence, prose-
cute or defend all actions or
proceedings authorized or requested
by the commission or to which the
commission is a party, and shall
advise the commission or the chief
engineer, when requested in all
matters in connection with the
organization, powers and duties of
the commission or the powers and
duties of the chief engineer. The
chief counsel shall, with the consent
of the commission, appoint such
assistant attorneys as the commission
may deem necessary and their salaries
shall be fixed by the commission.
The legal department of the commission
shall be furnished offices in the
state highway building."

It will be noticed by a reference to the above section
that the Chief Counsel shall, with the consent of the Commission,
appoint such assistant attorneys as the Commission may deem
necessary. While it is clear that the Legislature may, by a
proper amendment to Section 8098, supra, limit the number of
assistant attorneys to be employed by the State Highway Commis-
sion, nevertheless, the question before us is whether the
Legislature may accomplish this result by means of an appropria-
tion act.

Article IV, Sec. 28 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."

In the case of State ex rel. Hueller v. Thompson, (Supreme Court of Missouri) 289 S.W. 338, the court had before it the interpretation of this section of our Constitution, and said: (l.c. 340-341)

> "It is manifest that the real purpose of this provision was an undertaking to regulate, determine, and fix the salaries of all such officers or employees affected by the Appropriation Act whose compensation might not be fixed at all by statutory law, or, if at all, where the statute fixed a maximum only. This provision has no other character than that of general legislation, and to inject general legislation of any sort into an appropriation act is repugnant to the Constitution (article 4, sec. 28, Constitution of Mo.), and the appropriation bill, as provided by the Constitution (article 4, sec. 28, may have a plurality of subjects, while a bill for general legislation may have but one.
>
> 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.
>
> *    *    *    *
>
> "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.
>
> *    *    *    *

"The question remains, does the
invalidity of said section 100
render the entire Appropriation
Act void? We hold that it does
not. It is well settled that a
legislative act may be void in part,
leaving the remainder a good and
valid statute, where the part that
is valid may be separated from the
part that is void. State ex rel.
v. Gordon, 236 Mo. l.c. 170, 139
S.W. 403; State ex rel. v. Taylor,
224 Mo. 474, 123 S.W. 892."
(Emphasis ours)

And in the case of State v. Smith, 75 S.W. (2d) 828, the
Supreme Court of Missouri said (l.c. 830):

"***Besides, legislation of a general
character cannot be included in an
appropriation bill. If this appro-
priation bill had attempted to amend
Section 13525, it would have been
void in that it would have violated
Section 28 of Article 4 of the Con-
stitution which provides that no bill
shall contain more than one subject
which shall be clearly expressed in
its title. There is no doubt but
what the amendment of a general
statute such as section 13525, and
the mere appropriation of money are
two entirely different and separate
subjects. State ex rel. Hueller v.
Thompson, State Auditor, 316 Mo. 272,
289 S.W. 338."

## CONCLUSION

In view of the foregoing, it is the opinion of this
department that the limitation "not to exceed four", as incor-
porated in Section 1 of House Bill No. 277 making the appropriation
of the State Highway Department is unconstitutional and void.

Respectfully submitted,

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

APPROVED:

ROY MCKITTRICK,