

APPROPRIATIONS: Section 44c of Article IV, of the Constitution of the State of Missouri, constitutes an appropriation for the payment of principal and interest on Soldier Bonus Bonds without legislative action.

September 13, 1940

Honorable Robert W. Winn  
State Treasurer  
Jefferson City, Missouri



Dear Sir:

We are in receipt of your letter of September 11, 1940, requesting an opinion of this department, which is as follows:

"The State Board of Fund Commissioners has authorized the issuance of a State Auditor's Warrant in the sum of \$50,000.00 chargeable to the Soldier Bonus Interest and Sinking Fund in payment of \$50,000.00 Soldier Bonus Bonds issued by said Fund Commissioners, dated October 1, 1939, and maturing October 1, 1940.

These bonds were issued under the provisions of Section 44C, Article 4 of the Constitution of Missouri, for the purpose of winding up the payment of Soldier Bonus claims under the provisions of that constitutional act. No appropriation was requested of the last General Assembly for the reason that the State Board of Fund Commissioners did not contemplate the necessity of issuing additional bonds under the provisions of Section 44C of Article 4 of the constitution.

We would appreciate your opinion as to whether or not the bonds above described can be paid from the Soldier Bonus Interest and Sinking Fund without the legislative appropriation."

Section 44c, Article IV, of the Missouri Constitution (15 Mo. St. Ann., page 482) provides in part as follows:

"All of the provisions of said act shall apply to and govern the issuance and payment of the principal and interest of the bonds herein authorized and the disbursement of the proceeds thereof without further legislative action, except that the interest on said bonds may be payable at such times and at such place or places as may be designated by the said board of fund commissioners; said board shall pay all expenses of issuing and marketing the bonds out of the proceeds of the sale thereof. (Submitted by the constitutional convention and adopted Feb. 26, 1924.)"

Your question is limited to the single purpose as to whether or not a legislative appropriation is a prerequisite to the payment of principal and interest on Soldier Bonus Bonds issued under the provisions of Section 44c, Article IV, of the Missouri Constitution, supra. The bonds in question were dated October 1, 1939, will become due and payable on October 1, 1940, and were issued under the authority of the State Board of Fund Commissioners pursuant to Section 44c of Article IV, of the Constitution of the State of Missouri.

It is the opinion of this department that by the foregoing provision the Constitution has, by a specific direction, appropriated the revenue derived from the levy and collection of a direct tax upon all of the taxable property in the state to pay the principal and interest on the bonds issued pursuant to the above section of the Constitution. We are advised that there are ample funds available to pay said bonds and interest at this time. It is our view that, under the provisions of the above section of the Constitution, the money stands appropriated to authorize the payment of the maturing principal and interest, notwithstanding the fact that no appropriation was requested or made by the General Assembly.

The general rule on this subject is stated in 59 C. J.:

"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 a portion of the above statement holding that the constitutional provisions are themselves sufficient appropriation when the purpose to appropriate is clear. Section 44c of Article IV, of the Constitution, is plain and unambiguous, and the purpose to appropriate is clear.

The Supreme Court, in the case of State ex rel. McKinley Pub. Co. v. Hackmann, State Auditor, 282 S. W. 1007, construing a similar section of the Constitution, held, at page 1013:

"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 re-

mainder to the payment of the principal and interest of certain bonds. It makes no attempt whatever to appropriate without legislative sanction the amount needed for the expenses of the commission. Who, therefore, is to determine the amount required to maintain the highway commission? Is this to be determined by the highway commission, unhampered by legislative permission, or by the Legislature in the regular way by an appropriation act?

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, \* \* \*

It is our opinion that the above statements of the Supreme Court as to the construction of Section 44a apply to the construction of Section 44c, and we note that both sections 44a and 44c contain the same language, "without further legislative action," referring to the payment of principal and interest on the bonds.

It is therefore the opinion of this department that the State of Missouri World War Soldier Bonus Bonds, Series of 1939, in the aggregate amount of \$50,000.00, issued pursuant to Section 44c of Article IV, of the Constitution of Missouri, may be paid from the Soldier Bonus Interest and Sinking Fund pursuant to the Constitutional appropriation found in that section authorizing the payment of such principal without further legislative

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action from the proceeds derived from the levy and collecting from a direct annual tax upon the taxable property in the state to pay the principal and interest of said bonds.

Respectfully submitted,

COVELL R. HEWITT  
Assistant Attorney General

CRH:VC