

RE: General appropriation bills need no emergency clause to become operative immediately when signed by the Governor. Section 659, RSMo 1929.

Filed: #3

April 27, 1933.

Hon. Forrest Smith,  
State Auditor,  
Jefferson City, Mo.



Dear Sir:

Your letter of April 26 reads as follows:

"Appropriation bills Nos. 649 - 650 - 657 and 661 passed without an emergency clause.

Will you please advise this office if an emergency clause is needed on these appropriations, and if I have authority under the Joint and Concurrent Resolution passed by both branches of the General Assembly to pay salaries for the month of April to all departments of the State Government?"

Appropriation Bills Nos. 649, 650, 657 and 661 are general appropriation bills. Section 36, Article IV of the Constitution of 1875 provides:

"No law passed by the General Assembly, except the general appropriation act, shall take effect or go into force until ninety days after the adjournment of the session at which it was enacted, unless in case of an emergency (which emergency must be expressed in the preamble or in the body of the act), the General Assembly shall, by a vote of two-thirds of all the members elected to each house, otherwise direct; said vote to be taken by yeas and nays, and entered upon the journal."

Section 659 Revised Statutes of Missouri of 1929 reads as follows:

"A law passed by the general assembly shall take effect ninety days after the adjournment of the session at which it is enacted, subject to the following exceptions:

(a) A law necessary for the immediate preservation of the public peace, health or safety, which emergency must be expressed in the body or preamble of the act and which is declared to be thus necessary by the general assembly, by a vote of two-thirds of its members elected to each house, said vote to be taken by yeas and nays, and entered on the journal, or a law making an appropriation for the current expenses of the state government, for the maintenance of the state institutions or for the support of public schools, shall take effect as of the hour and minute of its approval by the Governor; which hour and minute may be endorsed by the Governor on the bill at the time of its approval.

(b) In case the general assembly, as to a law not of the character hereinbefore specified, shall provide that such law shall take effect on a date in the future subsequent to the expiration of the period of ninety days hereinbefore mentioned, said law shall take effect on the date thus fixed by the general assembly.

(c) Laws not of the nature hereinbefore specified enacted by the general assembly at its regular session in 1929 and each ten-year period thereafter, and except as otherwise provided by law, the Revised Statutes of 1929 and each ten-year period thereafter, shall take effect on the first day of November in the year of their enactment or authorization: provided, that unless suspended under the referendum or unless otherwise provided by law, laws changing the time of holding courts shall take effect in ninety days after the adjournment of the session at which such laws may have been enacted."

Section 36, Article IV of the Constitution above quoted expressly provides all laws passed by the General Assembly shall not take effect until ninety days after the adjournment of the session at which same were enacted. Said section 36 of Article IV also expressly provides general appropriation bills are not subject to the rule that all laws shall take effect ninety days after adjournment of the session.

Does this legal situation make general appropriation bills without an emergency clause operative immediately when signed by the Governor? The answer is that it does. The four bills, Nos. 649, 650, 657 and 661 are general appropriation bills without an emergency clause and will be operative the moment the Governor signs same.

Setting aside completely Section 659, Revised Statutes of Missouri above quoted and not considering same, the four said above general appropriation bills without emergency clauses will under the provision of Section 36, Article IV of the State Constitution be operative at once when same are signed by the Governor.

I have been unable to find any decision of our Missouri Supreme Court deciding this exact question and find only one case in the entire forty-eight states of the Union deciding this precise point, and that is the case of the State of Washington on the relation of the Attorney General v. The State Capitol Commission, reported in 24 Washington R.P. #17.

The petition of the Attorney General in that case alleged the Capitol Commission had met and sold state warrants in the sum of \$350, 000 drawn on the capitol building fund pursuant to an appropriation made by law and that the Appropriation Act contained no emergency clause and therefore was not in force until ninety days after the adjournment of the Legislature and he prayed the court to prohibit the appropriation being used until the ninety days had expired. The court held under the Constitution of the State of Washington no emergency clause was needed and the Appropriation Act was operative immediately, and in the course of the opinion the court said (l.c. 419-20-21):

"The controversy requires construction of Sec. 31, Art. 2, of the constitution, which declares: "No law, except appropriation bills, shall take effect until ninety days after the adjournment of the session .... unless in case of an emergency ... the legislature shall otherwise direct." In the arguments presented by counsel it is conceded that little judicial construction exists which is authority upon the point involved here. It seems a number of states have constitutions similar to the provision in ours; that is, specifying the time within which all acts of the legislature go into effect. In only a few of the states having such a prescription of time are there exceptions where any law has immediate effect from its approval but some four of the state constitutions have been called to our attention which contain exceptions. That of Louisiana (art. 40) declares: "No law passed by the general assembly, except the general appropriation act, or act appropriating money for the expenses of the general assembly, shall take effect until promulgated." Missouri (Sec. 36, Art. 4): "No law passed by the general assembly, except the general appropriation act, shall take effect." Kentucky (Sec. 55): "No act, except general appropriation bills." Texas (Sec. 39, art. 3): "No law passed by the legislature, except the general appropriation act." These constitutions are older

than ours, and it is therefore fair to assume that in framing the constitution of Washington the limitation, "general appropriation bills," was intentionally omitted. At any rate the Court would not be authorized to insert the word "general" in the constitution. The words must be accepted in their ordinary and common meaning here. It has been urged by relator that, if an unrestricted meaning be given to the word "appropriation", all bills providing for the appropriation of money, however incidental, are appropriation bills. But this may not necessarily be conceded. It is true that all general appropriation bills provide money for certain purposes, ordinarily for the expenses of the government and public institutions, and incidentally may provide for the application of the appropriation and specify the purchase of materials required in running the same, and how it shall be done; yet such incidental specifications do not deprive the appropriation bill of its nature as general. In the act under consideration the existing capitol commission, with matured powers to fully proceed to the erection of the capitol, has some different and additional duties imposed upon it. The original appropriation made for the capitol building fund created in 1893 upon the faith of the land granted to the state for the erection of public buildings is reduced from the unexpended portion of \$930,000 to the sum of \$350,000, and the interest on this sum is guaranteed until the payment of the principal out of the capitol building fund when the interest so expended from the general fund shall be returned to the state. We think a fair construction of the act shows it to be substantially an appropriation bill, and that it comes within the exception mentioned in art. 2, supra, of the Constitution."

This case decides the exact question you present under a constitutional provision identical with our own state constitution; and it will be observed the court holds no emergency clause is necessary and the appropriation bill is operative at once when signed by the Governor.

The Supreme Court of Washington holds the language used in Section 36, Article IV of the Missouri Constitution that "No law passed by the General Assembly, except the general appropriation act shall take effect or go into force until ninety days after the adjournment of the session at which it was enacted unless in case of an emergency the General Assembly shall by a vote of

(Hon. Forrest Smith)

two-thirds of all the members elected to each House, otherwise direct", makes general appropriation bills without an emergency clause operative immediately when signed by the Governor.

My answer to your first question renders unnecessary passing upon the second question.

Very respectfully yours,

EDWARD C. CROW

APPROVED:

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Attorney General