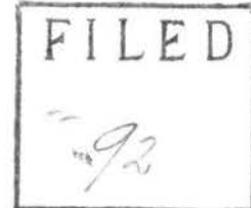


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Sec. 46, Art. IV, Mo. Constitution of 1875 forbids payment by General Assembly of counsel fee of contestor or contestee in contest for seat in lower House of Mo. General Assembly.

April 21, 1933.



Hon. Richard R. Nacy,
State Treasurer,
Jefferson City, Missouri.

Dear Sir:

Your letter reads as follows:

"I am enclosing herewith House committee report of election contest recommending a \$250.00 fee to be paid N.J. Craig, attorney for R.P. Weeks, contestee.

First, does this recommendation give the State Treasurer authority to pay this bill when certified by the State Auditor without a special appropriation for that purpose? Second, will this recommendation authorize the State Treasurer to pay this account when certified by the State Auditor, when an appropriation has been made for that purpose?"

The Constitution of Missouri of 1875, Article X, Sec. 19 thereof 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. ****"

In my opinion the General Assembly should make an appropriation to pay this counsel fee and expense of Two hundred and fifty dollars, if it is paid.

Article VIII, Chapter 61, R.S. of Mo. of 1929 provides for candidate contesting election of any person to the Senate or House of Representatives, but I have been unable to find in Article VIII, Chapter 61, or elsewhere in the Missouri Statutes any provision authorizing the General Assembly of Missouri to appropriate money to pay the counsel fees in such a contest of either contestor or contestee. If a statute exists authorizing payment of counsel fees in a legislative contest in Missouri, I have overlooked it.

If such a statute existed, I am of the opinion that it would not be valid because of the provisions of Sec. 46, Article IV of the Missouri Constitution, which provides:

"The General Assembly shall have no power to make any grant, or to authorize the making of any grant of public money or thing of value to any individual, association of individuals, municipal or other corporation whatsoever ***"

The General Assembly is a trustee for the citizens, clothed as trustee with certain powers and wherever the Constitution limits the power of the General Assembly to appropriate public funds, such such limitation bars legislative appropriation for any of prohibited uses. The payment of counsel fees of either contestor or contestee for a seat in the Missouri General Assembly would be a grant of public money to contestor or contestee for his or their private benefit, in my opinion.

A grant of public money to pay counsel employed by an individual or individuals to establish a right to a seat in Senate or House of Missouri General Assembly would be a grant to such individual and would be within the prohibition of the following decisions of our Supreme Court, in my opinion:

Hitchcock v. City of St. Louis, 49 Mo. 485
State v. Parker Distilling Co., 237 Mo. 103
Kavanaugh v. Gordon, 244 Mo., l.c. pp. 720-21-22
State ex rel v. Kimmel, 256 Mo. 611

It is true in State ex rel Crow v. City of St. Louis, 174 Mo. 125, the court held the city had a right to appropriate money to reimburse an officer who in an effort to kill a mad steer on a crowded street shot a child, whose next friend recovered damages against him, which he paid; but the right to make the appropriation on the ground the officer was in the discharge of his duty as such officer in removing a nuisance from the highway, which the law expressly required him to do and which the city was under obligations to its citizens to do in the discharge of its police power and its health and safety duty. But in case of counsel rendering service for the contestants for a legislative seat, the services are for the individual profit

(Hon. Richard R. Nacy)

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which would arise from the emoluments of the office to the successful contestor or contestee.

If the election committee investigating the question of which of the two candidates was elected expended money in such investigation, the General Assembly could by a specific appropriation therefor pay such expense. I do not think recommendation of the committee would justify you in paying the warrant for \$250. In my opinion, if this \$250 can be legally paid under our Constitution and statutes, it can only be done by a specific appropriation naming the particular purpose for which the appropriation is made.

I return you herewith the report of committee you enclosed.

Very respectfully yours,

EDWARD C. CROW.

APPROVED:

Attorney General

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