

CONSTITUTIONAL LAW:
STATE HIGHWAY PATROL:

State Highway Patrol, under Section 44a, Article IV of the Constitution of Missouri can only enforce the law as to motor vehicle laws and traffic regulations.

August 21, 1941

Honorable Forrest C. Donnell
Governor, State of Missouri
Jefferson City, Missouri



Dear Sir:

In compliance with your request for an official opinion as to the powers and duties of the State Highway Patrol, we are herein giving our opinion on this matter. The conclusion of our opinion is based primarily on--

First, Section 8358, Chapter 44, R. S. Missouri 1939;

Second, Section 8359, Chapter 44, R. S. Missouri 1939;

Third, Section 44a, Article IV of the Constitution of Missouri.

Section 8358, Chapter 44, R. S. Missouri 1939, reads as follows:

"It shall be the duty of the patrol to police the highways constructed and maintained by the commission; to regulate the movement of traffic thereon; to enforce thereon the laws of this state relating to the operation and use of vehicles on the highways; to enforce and prevent thereon the violation of the laws relating to the size, weight, and speed of commercial motor vehicles and all laws designed to protect and safeguard the highways constructed and maintained by the commission. It shall be the duty of the patrol whenever possible to determine persons causing or responsible for the breaking, damaging or destruction

of any improved hard surfaced roadway, structure, sign markers, guard rail or any other appurtenance constructed or maintained by the commission and to arrest persons criminally responsible therefor and to bring them before the proper officials for prosecution. It shall be the duty of the patrol to cooperate with the secretary of state and the motor vehicle commissioner in the collection of motor vehicle registration fees and operators and chauffeurs licenses and to cooperate with the state inspector of oils in the collection of motor vehicle fuel taxes."

Section 8359, R. S. Missouri 1939, Chapter 44, reads as follows:

"The members of the patrol are hereby declared to be officers of the state of Missouri and shall be so deemed and taken in all courts having jurisdiction of offenses against the laws of this state. The members of the patrol shall have the powers now or hereafter vested by law in peace officers except the serving or execution of civil process. The members of the patrol shall have authority to arrest without writ, rule, order or process any person detected by him in the act of violating any law of the state. When a member of the patrol is in pursuit of a violator or suspected violator and is unable to arrest such violator or suspected violator within the limits of the district or territory over which the jurisdiction of such member of the patrol extends, he shall be and is hereby authorized to continue in pursuit of such violator or suspected violator into whatever part of this state may be reasonably necessary to effect the apprehension and arrest of the same and to arrest such

violator or suspected violator wherever he may be overtaken."

Under Section 8358, supra, it is very noticeable that all of the duties placed under the State Highway Patrol were duties involving the administering of the state motor vehicle law and traffic regulations.

In the above section the Legislature specifically said:

"The members of the patrol are hereby declared to be officers of the state of Missouri and shall be so deemed and taken in all courts having jurisdiction of offenses against the laws of this state. * * * * *

The above partial quotation of Section 8359, supra, refers not to all laws but only as to the laws set out in Section 8358, supra, which the Legislature saw fit to have the State Highway Patrolmen enforce. The purpose of Section 8359, supra, was to authorize the State Highway Patrolmen to make arrests under their duties set out in Section 8358, supra, in the same manner that other officers have been authorized in their separate territorial jurisdiction. In the case of a sheriff his duties are confined to the county. In the case of constables and other officers their duties are confined to certain territories, and so in the case of State Highway Patrolmen their duties are confined to the territory set out in Section 8358, supra, which duties are mainly upon the highways of this state.

In construing Sections 8358 and 8359, supra, to the effect that the powers of the State Highway Patrol are confined to matters set out in Section 8358, supra, the courts of this state have held that sections of the law originally part of the same act should be read together. It was so held in the case of Consolidated School District No. 4 of Greene County v. Day, 43 S. W. (2d) 428. Since Section 8358, supra, specifically sets out in detail the duties of the patrol, and since Section 8359, supra, declares that members of the patrol are to be officers of the State of Missouri and shall be so deemed and taken in all courts having jurisdiction of offenses against the laws of this state, we are of the opinion that

this power applies to the duties set out in Section 8358, supra.

In reading other sections in Chapter 44, which is the Missouri State Highway Patrol Act, it can be seen that it was the intention of the Legislature to confine the State Highway Patrol to the enforcing of the state motor vehicle laws and traffic regulations. They enacted Section 8355, R. S. Missouri 1939, which provided a distinctive style of uniform, and also provided that vehicles used by members of the force should be distinctively lighted at night. The Legislature also in Section 8362 of the same chapter prohibited members of the patrol from having the right or power of search and seizure except the disarming of persons under arrest or about to be arrested.

House Bill No. 14 of the Sixty-first General Assembly appropriated to the State Highway Patrol \$1,495,414.00 out of the state treasury chargeable to the State Highway Department Fund. By this appropriation they are permitted to use money out of the Highway Department Fund.

House Bill No. 15 of the Sixty-first General Assembly appropriated to the State Highway Department out of the state treasury chargeable to the State Highway Department Fund certain moneys. The same House Bill appropriated to the State Highway Department out of the state treasury certain moneys chargeable to the State Road Fund. Under the appropriation there is no question but that the State Highway Patrol is using money out of the funds allotted to the State Highway Department and State Road Fund.

Chapter 44 of the Revised Statutes of Missouri 1939, in reference to the Missouri State Highway Patrol, was first enacted and appears in the Laws of Missouri 1931. Chapter 44, as it now appears in the Revised Statutes of Missouri 1939, is practically the same as was first enacted in 1931. The only changes made were to the number, their salary and as to the employment of clerks in the State Highway Patrol offices.

Section 8347 of Chapter 44 of the Revised Statutes of Missouri 1939, defines the word "commission" as used in that chapter to mean the Missouri State Highway Commission.

Section 8348 of Chapter 44 of the Revised Statutes

of Missouri 1939, provides for the appointment of a superintendent of the Missouri State Highway Patrol, sets his salary and places him under the supervision, direction and subject to the approval of the Commission.

Section 8351, Chapter 44, R. S. Missouri 1939, referring to the salaries of different members of the State Highway Patrol, specifically states "with the approval of the State Highway Commission." In view of the above sections there is no question but that the State Highway Patrol is directly under the State Highway Commission and receives its appropriation from the state road fund.

Of course, the State Highway Patrolman has been declared by Section 8359, supra, to be an officer of the State of Missouri and we have held it applies to his duties as set out in Section 8358, supra, yet he may make arrests on misdemeanors committed in his presence and may arrest one who has committed a felony either in his presence or out of his presence.

Section 8363, Chapter 44, R. S. Missouri 1939, reads as follows:

"Neither the governor, the commission, nor the superintendent shall have any power, right or authority to command, order or direct any member of the patrol to perform any duty or service not authorized by this chapter."

Under the above section the governor, the commission, the superintendent of the State Highway Patrol cannot direct any member of the patrol to perform any duty except that which is set out under Chapter 44. In the duties set out under Chapter 44, we find no reference to doing any duty except that of offenses connected with the state highways.

In the past former governors have directed the State Highway Patrol to perform duties not connected with the construction and maintenance of state highways or not connected with the enforcement of the state motor vehicle laws and traffic regulations. They have been ordered to make investigations in criminal cases not connected in any manner with the State Highway Department.

Since the duties of the State Highway Patrol only require them to enforce the laws in connection with the State Highway System as set out in Section 8358, supra, we call your attention to Section 18, Article II of the Constitution of Missouri which reads as follows:

"That no person elected or appointed to any office or employment of trust or profit under the laws of this State, or any ordinance of any municipality in this State, shall hold such office without personally devoting his time to the performance of the duties to the same belonging."

Section 44a, Article IV of the Constitution of Missouri was submitted by an initiative petition filed with the secretary of state according to law and was adopted at the general election held November 6, 1928, which repealed Section 44a, Article IV of the Constitution of Missouri, which was adopted November 2, 1920. This Section 44a, supra, was an exception to the general limitation of the power of the Legislature as set out in Section 44, Article IV of the Constitution of Missouri. Section 44a, Article IV of the Constitution of Missouri partially reads as follows:

"In addition to the exceptions made and created in section 44, the General Assembly shall, for the purpose of locating, establishing, acquiring, constructing, widening and improving hard-surfaced public highways in the State and in each county thereof, and of acquiring materials therefor and for the purpose of locating and constructing bridges across the rivers and waters of the State and of participating in the construction of toll-free, interstate bridges, have the power to contract or authorize to contracting of a debt or liability on behalf of the State and to issue bonds or other evidences of indebtedness therefor not exceeding in the aggregate one hundred and thirty-five millions of dollars --

* * * * *

"The said bonds and the interest that will accrue thereon shall be paid out of a fund to be provided by the levy and collection of a direct annual tax upon all taxable property in the State. All state motor vehicle registration fees, license taxes or taxes authorized by law on motor vehicles (except the property tax on motor vehicles and state license fees or taxes on motor vehicle common carriers) and also all state taxes on the sale or use of motor vehicle fuels authorized by law, less the expense of the collection of such registration fees and license taxes on motor vehicles and taxes on the sale or use of motor vehicle fuels and less also the cost of maintaining the State Highway Department and the State Highway Commission and the cost of administering and enforcing any state motor vehicle law or traffic regulation shall, after the issuance of any of said bonds and so long as any of said bonds herein authorized remain unpaid, be and stand appropriated without legislative action, to the payment of the principal and interest of the said bonds and for that purpose shall be credited to the State Road Bond Interest and Sinking Fund provided by law. * * * * *

To complete and widen or otherwise improve, and maintain the state system of primary and secondary highways as designated and laid out under existing law; to reimburse the various counties and political or civil subdivisions (including road districts) of the State for money expended by them in the construction or acquisition of roads and bridges now or hereafter taken over by the State as permanent parts of the state highway system to the extent of the value to the State of such roads

and bridges at the time taken over,
 not exceeding in any case the amount
 expended by such counties or sub-
 divisions in the construction or
 acquisition of such roads and bridges;
 * * * * *

"After the principal and interest of
 all of said bonds shall have been paid,
 all state motor vehicle registration
 fees, license fees or taxes, authorized
 by law, on motor vehicles (except the
 property tax on motor vehicles and
 state license fees or taxes on motor
 vehicle common carriers) and also all
 state taxes on the sale or use of motor
 vehicle fuels, authorized by law, less
 the expense of the collection of such
 registration fees and license taxes on
 motor vehicles and taxes on the sale or
 use of motor vehicle fuels and less also
 the cost of maintaining the State High-
 way Department and the State Highway Com-
 mission and the cost of administering
and enforcing any state motor vehicle
law or traffic regulation, shall be and
 stand appropriated without legislative
 action to the State Road Fund, to be
 administered and expended under the
 direction and supervision of the State
 Highway Commission for the purposes
 and in the manner hereinbefore set
 forth.

"It shall be the duty of the State
 Auditor, annually, on or before the
 first day of July, to determine the
 rate of taxation necessary to raise
 the amount of money needed for that
 year to pay the principal and interest
 maturing in the next succeeding year,
 * * * * *"

It will be noticed under Section 44a, Article IV,
 supra, that additional exceptions are made and created to
 the exceptions set out in Section 44, Article IV, supra.

It specifically states that the purpose of Section 44a, supra, was for the creation and purpose of locating, establishing, acquiring, constructing, widening and improving hard-surfaced public highways in the State, and in fact the whole purpose of Section 44a was for road and bridge purposes. It was not the purpose of the voters, who adopted Section 44a, that the money paid by them in taxes on certain commodities or privileges should be used for the purpose of the prevention or prosecution of all crime. The only place in Section 44a, supra, that will authorize an appropriation for the State Highway Patrol might be inferred from the following words which appear on page 93c of the Constitution of Missouri, "* * less the expense of the collection of such registration fees and license taxes on motor vehicles and taxes on the sale or use of motor vehicle fuels and less also the cost of maintaining the State Highway Department and the State Highway Commission and the cost of administering and enforcing any state motor vehicle law or traffic regulation * * "

The upkeep of the State Highway System depends on many channels of taxation. One of them is that there is to be collected a direct annual tax upon all taxable property in the state for the purpose of retiring the bonds and interest set out in Section 44a, supra. It also depends upon all of the motor vehicle registration fees, license taxes or taxes authorized by law on motor vehicles and also state taxes on the sale or use of motor vehicle fuels authorized by law less the expense of the collection of the above taxes and fees. All through Section 44a, supra, the fact that money obtained from registration fees, license taxes, license fees, motor fuel taxes and other taxes was for the main purpose for the construction and maintenance of roads and bridges.

All of the taxes above set out which were framed by the drawers of the constitutional amendment and which were voted upon and passed by the people were for the purpose of collecting public revenue of a very extraordinary kind, especially for the major use of the payment and retirement of the state bonds described in amendment Section 44a. In the case of State v. Hackmann, 282 S. W. 1007, par. 6, the court, in holding that the revenue was of an extraordinary kind, said:

"The money out of which the highway

commission is to be maintained is as much public or state revenue as any money coming into the state treasury from any source. Whether it is called motor vehicle registration fees, license fees, or a tax (all of which designations are used in section 44a of article 4 of the Constitution, vide Laws 1921, 1st Ex. Sess. p. 196), or by any other name, it is a tax levied by the state upon the right of motor vehicles to use the public streets and highways of the state. It is not only levied by the state, but is collected by it, and paid directly from the motor vehicle owners into the state treasury (Laws 1921, 1st Ex. Sess. p. 104, section 28). The state, therefore, is interested in what use is made of revenue from that source. So much is it interested that the people, in amending the Constitution (section 44a of article 4, supra), declared that all such taxes received by the state, less the costs of maintaining the state highway commission, should stand appropriated without legislative action for and to the payment of the principal and interest of certain state bonds and the accumulation of a sinking fund therefor. To say, therefore, that the state is not interested, and vitally interested, in the amount to be taken from this fund for the maintenance of the highway commission is not in accord with the people's action in amending the Constitution and that of the Legislature in creating the commission.

"The term 'state revenue' was recently defined by the court in banc in State ex rel. Thompson v. Treasurer of Teachers' College, 264 S. W. loc. cit. 700, 305 Mo. 64. In that case the court said:

"By revenue, whether its meaning be measured by the general or the legal

lexicographer, is meant the current income of the state from whatsoever source derived which is subject to appropriation for public uses. This current income may be derived from various sources, as our numerous statutes attest, but, no matter from what source derived, if required to be paid into the treasury, it becomes revenue or state money.'

"It thus appears that not only is the fund public revenue or state money, but it is public revenue of a very extraordinary kind, levied, collected, and held by the state for two specific public uses, the major use of which is the payment and retirement of state bonds."

Section 44a, supra, further provided, as above set out, that after the principal and interest on all the bonds described in Section 44a have been paid, all state motor vehicle registration fees, license fees and taxes, and also all state taxes on the sale or use of motor vehicle fuels less the expense of collection, should stand appropriated without legislative action to the state road fund under the direction and supervision of the State Highway Commission for the purpose of the construction and maintenance of roads and state highways. In making the above provision, the framers of Section 44a, Article IV of the Constitution of Missouri saw fit, for the second time, to deduct the cost of administering and enforcing any state motor vehicle or traffic regulations.

There is no question but that the purpose of Section 44a, supra, was to construct and maintain the state highways and other roads in the State of Missouri. That it was for that purpose was held in *State v. Smith*, 67 S. W. (2d) 50, l. c. 56, where the court said:

"* * * * that the commission as created is 'vested with the powers and duties specified in this article, and also all powers necessary or proper to enable the commission, or any of its

officers or employees, to carry out fully and effectively all of the purposes of this article.' In respect of road construction and its connected incidents, nothing is omitted. The act is a special law; a complete well-rounded harmonious whole, relating to a single homogeneous enterprise that was designed by the people and furthered by the Legislature to 'get Missouri out of the mud.' * * * * *

Section 44a, supra, only mentions criminal prosecution as to enforcement of the state motor vehicle laws and traffic regulations. The wording of the amendment is unambiguous and clearly states the purpose of the section. In the case of State v. State Highway Commission, 42 S. W. (2d) 196, par. 9, the court, in construing Section 44a, supra, said:

"We cannot tell all that was in the minds of those who drew the amendment or of the voters who voted for it. We do not say any of the things we have suggested, were. But we are controlled by what the amendment says, so far as its recitals are consistent and intelligible, and it is our duty to give effect to every part if possible. Castillo v. State Highway Commission, supra, 312 Mo. loc. cit. 264, 279 S. W. 673, loc. cit. 676.
* * * * *

Under the above holding it cannot be implied that the State Highway Patrol, which is not mentioned in Section 44a, supra, would now have the authority to perform criminal duties other than the enforcement of the state motor vehicle law and traffic regulations and as set out in Section 8358, supra.

The taxes other than the direct tax for the State Highway Commission also comes from the gasoline tax which is provided for in Section 8412, R. S. Missouri 1939, which reads as follows:

"For the purpose of providing funds to complete the construction of and

for the maintenance of the state highway system of this state as designated by law, there is hereby provided a license tax equal to two cents per gallon of motor vehicle fuels as defined in this article used in motor vehicles of the public highways of the state, which license tax shall apply and become effective January 1, 1925."

Under the above section it specifically provides for funds to complete the construction and maintenance of a state highway. This tax is paid into the state treasury, subject to appropriation for the State Highway Commission from whose funds the State Highway Patrol, by appropriation, draws its funds. Also, Section 8402, R. S. Missouri 1939, provides that all fees for the registration of motor vehicles, trailers, chauffeurs, and in fact everything pertaining to the automobile shall be paid to the state treasurer who shall deposit the same to the credit of the State Road Fund. In other words, the State Highway Patrol is receiving appropriations from taxes that are earmarked for the construction of roads in the state for their maintenance and are using the funds for the investigation, prosecution and prevention of crimes that are not mentioned in Section 44a, supra, except the crime concerning the state motor vehicle law and traffic violation. The State Road Fund, as provided for under Section 44a, supra, was formulated by a vote of the people for the sole purpose of the construction and maintenance of highways and the mention of the phrase "cost of administering and enforcing any state motor vehicle law or traffic regulation" was merely an incident to the amendment. The money raised by reason of Section 44a, supra, is as sacred to the maintenance and construction of highways as the money earned or formulated under other sections of the Constitution, such as the money earmarked state aid and maintenance of public schools.

CONCLUSION

It is, therefore, the conclusion of this department that the money paid into the state treasury for the bene-

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fit of the State Highway Commission and other departments thereunder is a sacred fund for the purpose of the construction and maintenance of the State Highway System and cannot be appropriated for any other purpose.

It is further the opinion of this department that Chapter 44 of the Revised Statutes of Missouri 1939, concerning the forming and the duties of the State Highway Patrol, was enacted by reason of the fact that Section 44a, Article IV of the Constitution of Missouri, contained the following incidental clause, "less * * * the cost of administering and enforcing any state motor vehicle law or traffic regulation * *"

It is further the opinion of this department that the only powers of the State Highway Patrol are contained in Section 8358, Chapter 44 of the Revised Statutes of Missouri 1939, which section confines their duties only to the administering of the motor vehicle laws and traffic regulations.

It is further the opinion of this department that any appropriation out of the extraordinary road fund, as formed under Section 44a, Article IV of the Constitution of Missouri, would be unconstitutional as to any appropriation made for the purpose of the State Highway Patrol in performing any other duties except that of administering and enforcing any state motor vehicle law or traffic regulation as set out under Section 8358, R. S. Missouri 1939.

Respectfully submitted

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