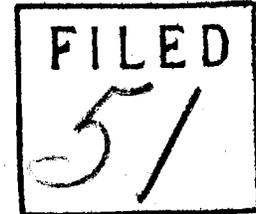


STATE SENATORIAL REDISTRICTING
COMMISSION:

- (1) Necessity of appropriation by General Assembly for payment of salaries of members of Commission;
- (2) Right of Commission to reimbursement for outlays for necessary clerical help.

June 14, 1945



Honorable H. P. Lauf
Honorable George A. Rozier
Members, Senatorial
Redistricting Commission
Jefferson City, Missouri

Gentlemen:

This will acknowledge receipt of your letter of June 13, 1945, in which you submit the following for our opinion:

"The Senatorial Redistricting Commission, at its first meeting on June 6, 1945, authorized the undersigned, for and on behalf of the Commission, to request your opinion upon the following questions:

"1. Will it be necessary for the General Assembly to pass an appropriation bill for the committee's salary?

"2. May the General Assembly constitutionally enact appropriate legislation providing for the employment of clerical help by the Commission?"

With respect to the first question you propose, we direct your attention to a portion of Article IV of Section 15 of the Constitution of 1945, reading as follows:

"The state treasurer shall be custodian of all state funds. All revenue collected and moneys received by the state from any source whatsoever shall go promptly into the state treasury, and all interest, income and re-

turns therefrom shall belong to the state. Immediately on receipt thereof the state treasurer shall deposit all moneys in the state treasury to the credit of the state in banking institutions selected by him and approved by the governor and state auditor, and he shall hold them for the benefit of the respective funds to which they belong and disburse them as provided by law. * * * "

Further, to the following provisions of Section 28 of the same Article:

"No money shall be withdrawn from the state treasury except by warrant drawn in accordance with an appropriation made by law, nor shall any obligation for the payment of money be incurred unless the comptroller certifies it for payment and the state auditor certifies that the expenditure is within the purpose of the appropriation and that there is in the appropriation an unencumbered balance sufficient to pay it. * * * "

Similar provisions appeared in the Constitution of 1875, being, respectively, Section 43 of Article IV and Section 19 of Article X. In construing the provisions of these sections, the Supreme Court of Missouri, in the case of State ex rel. v. Gordon, 236 Mo. 142, 1. c. 157, said:

"It is provided by section 43, article 4 of the Constitution of this State that: 'All revenue collected and moneys received by the State from any source whatsoever shall go into the treasury, and the General Assembly shall have no power to divert the same, or to permit any money to be drawn from the treasury, except in pursuance of regular appropriations made by law.' And by section

19, article 10, that: 'No moneys shall ever be paid out of the treasury of this State, or of 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.'

"The language of the foregoing provisions of the Constitution is clear and explicit and forbids the payment of money from the State treasury 'received from any source whatsoever' or 'of any funds under its management' except in pursuance of regular appropriations made by law. Because of this constitutional inhibition we have no difficulty in deciding that in the absence of an appropriation made by the General Assembly for that purpose no funds could be lawfully paid out of the State treasury for the support and maintenance of the game department, nor would relator be entitled to the audit and allowance of his accounts for salary and expenses."

The principle enunciated in the case cited was further affirmed in the case of *Nacy v. Le Page*, 111 S. W. (2d) 25, 1.c. 26, wherein the court said:

" * * * The state treasurer, in his official capacity and in the funds of the state treasury, has no goods, moneys, or effects of any private citizen in his custody, nor does he owe a debt from the treasury to any one. He is a custodian of public funds, raised by taxation, which belong to the state. His duty is to pay out these funds

only 'in pursuance of an appropriation by law' which 'shall distinctly specify the sum appropriated, and the object to which it is to be applied.' Section 19, article 10, Constitution. * * *

From the foregoing, we believe that it will be necessary that an appropriation bill be passed by the General Assembly to provide for the payment of the salary of your Commission.

Your second question involves the power of the General Assembly to enact appropriate legislation providing for the employment of clerical help by the Commission.

It is a well established rule of law that a State Constitution is a limitation upon the power of the General Assembly rather than a grant of power to that body. In other words, the General Assembly is free to enact any legislation which it is not forbidden to do by the State Constitution or Federal Constitution.

In the case of State ex rel. v. Canada, 113 S. W. (2d) 783, l. c. 785, the Supreme Court of Missouri said:

"Our State Constitution is not a grant but a limitation on legislative power, so the Legislature may enact any law not expressly or impliedly prohibited by the Federal or State Constitution." (Citing authorities.)

In the case of State ex rel. v. Southwestern Bell Telephone Co., 179 S. W. (2d) 77, l. c. 80, the Supreme Court said:

"The Legislature having plenary power to enact laws, absent constitutional restrictions, such restrictions must be expressed in the Constitution or clearly implied by its provisions.' State v. Shelby, 333 Mo. 1036, 64 S. W. 2d 269, loc. cit. 271. "There is no better settled law in our state than the rule that courts will not hold a statute to be unconstitutional unless it contravenes the organic law in such a manner as to leave no doubt of its unconstitutionality." * * *"

An examination of the present Constitution of Missouri does not reveal any provision which would prohibit the General Assembly from authorizing the Senatorial Redistricting Commission to employ clerical help in connection with the discharge of the duties of that body. By so doing, the General Assembly would not be encroaching upon the powers of the Senatorial Redistricting Commission in any way but would be lending aid to said Commission. In view of the fact that there is no prohibition against the General Assembly passing such legislation, it must follow, in view of the above authorities, that the General Assembly can enact such legislation.

In this connection it should be considered whether or not the Senatorial Redistricting Commission has power to employ necessary clerical help without the aid of an act of the General Assembly.

Section 7 of Article III of the Constitution of 1945 provides, in part, as follows:

" * * * The commission shall re-apportion the senators by dividing the population of the state by the number thirty-four, and the population of no district shall vary from the quotient by more than one-fourth thereof. The commission shall file with the secretary of state a full statement of the numbers of the districts and the counties included in the districts, and no statement shall be valid unless approved by seven members. After the statement is filed senators shall be elected according to such districts until a re-apportionment is made as herein provided, except that if the statement is not filed within six months of the time fixed for the appointment of any such commission it shall stand discharged and the senators to be elected at the next election shall be elected from the state at large, following which a new commission shall be appointed in like manner and with like effect. No such reapportionment shall be subject to the referendum."

It will be seen by the foregoing constitutional provision that the Redistricting Commission is given express authority to

divide the State of Missouri into senatorial districts, and when it has so done in accordance with said provisions, such division shall be controlling. Said provision does not undertake to set out the details of the actions and proceedings of said Commission, but it does give the Commission the express authority to divide the State into senatorial districts. The question then presents itself as to how much authority is thus given to the said Commission by the constitutional provision above quoted.

In construing the meaning and effect of said constitutional provision, the same rules of construction should be applied as are applied to the construction of statutes enacted by the General Assembly. In the case of *State ex rel. v. Imel*, 242 Mo. 293, 1. c. 301, the court quoted with approval the following:

"The established rules of construction applicable to statutes also apply to the construction of Constitutions." (8 Cyc. 729.)"

Some well established rules of statutory construction are, therefore, in order. In the case of *State ex rel. v. Wymore*, 132 S. W. (2d) 979, 1. c. 987, the Supreme Court said:

"The rule respecting such powers is, that in addition to the powers expressly given by statute to an officer or a board of officers, he or it has, by implication, such additional powers, as are necessary for the due and efficient exercise of the powers expressly granted, or as may be fairly implied from the statute granting the express powers." *Throop's Public Officers*, Sec. 542, p. 515.

"Necessary implications and intendments from the language employed in a statute may be resorted to to ascertain the legislative intent where the statute is not explicit, but they can never be permitted to contradict the expressed intent of the statute or to defeat its purpose. That which is implied in a statute is as much a part of it as that which is expressed. A statutory grant of a power or

right carries with it, by implication, everything necessary to carry out the power or right and make it effectual and complete, but powers specifically conferred cannot be extended by implication.' * * *"

Applying the above rules of construction to the constitutional provision respecting the Senatorial Redistricting Commission, we must conclude that the Commission has whatever authority and power is necessary to effectuate the dividing of the State of Missouri into senatorial districts. The State of Missouri is a large State with approximately four million people residing therein. The Commission is required by the constitutional provision to reapportion the senators by dividing the population of the State by the number thirty-four, so that the population of no district shall vary from said quotient by more than one-fourth thereof. There are one hundred fourteen counties and the City of St. Louis within the State. It can easily be seen that to effect such reapportionment of senators in accordance with the spirit and letter of the Constitution will require clerical work which the members of the Commission themselves could not do efficiently. It would appear, therefore, that employment of necessary clerical help by the Commission would not be an unauthorized act, but in fact such employment would be legal.

However, even though the Senatorial Redistricting Commission has authority to employ necessary clerical help to enable it to effectively perform its functions, it does not follow that the Commission has authority to pay such help out of State funds. As pointed out above, money cannot be withdrawn from the treasury of the State without an appropriation act. Therefore, before the services of such clerical help could be paid for out of State funds, there must be an appropriation available therefor. If the General Assembly should pass an act authorizing the Commission to employ clerical help, and should also pass an appropriation act to provide funds for the payment of such clerical help, then the Senatorial Redistricting Commission could cause such expenses to be paid out of the State treasury. In the event the General Assembly does not pass an act authorizing the Commission to employ clerical help, but does pass an appropriation act to make available funds for the payment of necessary expenses incurred by the Senatorial Redistricting Commission, then the Commission could present bills for reimbursement of amounts expended by them for clerical help which was necessary to the

proper functioning of said Commission, and said bills could be lawfully paid out of such appropriation.

The Supreme Court of Missouri has on numerous occasions held that an officer was entitled to be reimbursed for money necessarily expended by him in the performance of the duties of his office. In the case of *Ewing v. Vernon County*, 216 Mo. 681, 1. c. 695, the Supreme Court said:

"The conclusion we have come to comports with the general doctrine announced in 23 Am. and Eng. Ency. Law (2 Ed.), 388. 'Where,' say the editors of that standard work, 'the law requires an officer to do what necessitates an expenditure of money for which no provision is made, he may pay therefor and have the amount allowed him. Prohibitions against increasing the compensation of officers do not apply to such cases. Thus, it is customary to allow officers expenses of fuel, clerk hire, stationery, lights, and other office accessories.'"

In the late case of *Rinehart v. Howell County*, 153 S. W. (2d) 381, the Supreme Court quoted with approval the foregoing citation from the *Vernon County* case, and approved the payment by a county for reimbursement to the prosecuting attorney for money which he had expended for stenographic help where it was found that such stenographic services were indispensable to the performance of the duties of his office.

In line with these authorities, we think it is clear that if the Senatorial Redistricting Commission is compelled to furnish clerical services in order to carry out the functions of said body, such Commission would be entitled to be reimbursed for said sums so expended, provided, of course, a fund is made available for said purpose by appropriation.

CONCLUSION

It is, therefore, the opinion of this department that (1) it will be necessary that an appropriation bill be passed by the

June 14, 1945

General Assembly to provide for the payment of the salary of the members of the Senatorial Redistricting Commission; (2) that the General Assembly can enact appropriate legislation providing for the employment of clerical help by the Senatorial Redistricting Commission set up by the Constitution of Missouri; (3) that the Senatorial Redistricting Commission is entitled to be reimbursed for money expended for clerical help necessary for the proper performance of the functions of that Commission even without an act of the General Assembly expressly authorizing it to employ such help; but (4) that in the absence of an express statute authorizing the employment of clerical help by the Senatorial Redistricting Commission, such Commission could only be reimbursed for such expenditures provided the General Assembly appropriates money for said reimbursement.

Respectfully submitted,

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APPROVED:

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