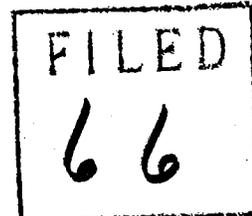


APPROPRIATIONS: Constitutionality of appropriation for payment of premiums in connection with agriculture exhibits.

July 2, 1945

7/11



Honorable Fred A. Neel  
Representative, Randolph County  
House Post Office  
Jefferson City, Missouri

Dear Sir:

Reference is made to your letter dated June 28, 1945, requesting an official opinion of this office, and reading as follows:

"I am asking for your opinion at the earliest date on House Bill #428, Page 42, Section 57a. Do the legislators have the right to appropriate money to the breeders of cattle, hogs and sheep to put on sales for their special benefit?"

That portion of House Bill No. 428 referred to in your letter reads as follows:

"Section 57a. There is hereby appropriated to the State Department of Agriculture according to Article 18, Chapter 102, Revised Statutes of Missouri, 1939, to be awarded as premiums made in connection with agriculture exhibits by members of boys' and girls' 4-H Clubs, vocational agriculture students, and Future Farmers of America, of Missouri, and State Breed Shows and Sales of beef cattle, dairy cattle, hogs, sheep, and poultry for encouraging the immediate production, distribution, and use of superior breeding stock

July 2, 1945

for the period beginning July 1, 1945,  
and ending June 30, 1946, the sum of  
\$15,000.00."

Section 14288 of Article 18, Chapter 102, R. S. Mo. 1939,  
referred to in the appropriation bill, reads, in part, as fol-  
lows:

" \* \* \* The commissioner of agriculture  
\* \* \* may pay cash premiums from appro-  
priations made in connection with agri-  
culture exhibits, whenever in his judg-  
ment same is desirable. \* \* \*"

You will note that the appropriation bill makes provision  
for the payment of premiums in connection with state breed  
shows and sales of beef cattle, dairy cattle, hogs, sheep, and  
poultry, whereas Section 14288, R. S. Mo. 1939, authorizes the  
commissioner to pay cash premiums in connection with agricul-  
ture exhibits. It might be thought that the appropriation bill  
is more comprehensive in scope than the statute mentioned.  
However, we find the following definition of "agriculture" or  
"agricultural" in 3 Words and Phrases, Perm. Ed., page 36:

"The word 'agricultural' means pertaining  
to, connected with, or engaged in 'agri-  
culture,' which is the science of cultivat-  
ing the ground, especially in fields or  
large quantities, including the preparation  
of the soil for the planting of the seeds,  
the raising and harvesting of crops, and  
the rearing, feeding and management of live-  
stock; tillage, husbandry, and farming."

With this definition in mind, it is apparent that the  
purposes for which the appropriation is made are within the  
scope of Section 14288, R. S. Mo. 1939.

It then becomes pertinent to make some examination of the  
statute purportedly authorizing the disposition of the money so  
appropriated in the manner set out in said statute to determine  
whether or not such purposes are in contravention of any con-  
stitutional prohibitions.

The Constitution of 1945 contains the following provision appearing as Article III, Section 38, reading, in part, as follows:

"The general assembly shall have no power to grant public money or property, \* \* \* to any private person, association or corporation, excepting aid in public calamity, and general laws providing for pensions for the blind, for old age assistance, for aid to dependent or crippled children or the blind, for direct relief, for adjusted compensation, bonus or rehabilitation for discharged members of the armed services of the United States who were bona fide residents of this state during their service, and for the rehabilitation of other persons. \* \* \* "

It might be thought that the paying of premiums for the purposes mentioned in the appropriation bill would be in contravention of this constitutional provision. There has as yet been no case decided under this portion of the Constitution of 1945, nor has there been any judicial construction thereof. However, the Constitution of 1875 contained a similar provision, appearing as Article IV, Section 46, which read as follows:

"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: Provided, That this shall not be so construed as to prevent the grant of aid in a case of public calamity."

A great many cases have been decided by the appellate courts construing this portion of the Constitution of 1875, particularly with reference to conditions under which public money may be appropriated and to whom. Probably the leading case under this provision of the Constitution of 1875 is Jasper County Farm Bureau v. Jasper County, 315 Mo. 560. In this

July 2, 1945

case a statute providing that county courts might appropriate public funds to the use of farm bureaus was under attack on the ground that it was unconstitutional in the light of Article IV, Section 46. In that case the court said:

"There is, of course, no difficulty in ruling that public funds cannot be appropriated for other than public purposes. About this there can be no dispute, and therefore, when a controversy such as comes up in this case arises, the only question to be considered is whether the purpose for which the money is to be appropriated is a public one within the meaning of the constitutional provisions.

"It is also true that many objects for which money may be appropriated are so clearly public in their nature that there could not well be any difference of opinion on the subject, such, for example, as public charities, and appropriations providing for the care of the indigent, destitute and insane, either in institutions exclusively under state control or those maintained by corporations for purely charitable purposes. \* \* \* So also public funds appropriated for the state and county system of schools. Likewise the expending of public funds in the construction of necessary public buildings and the construction and maintenance of public roads. On the other hand, there are many other enterprises helpful to the public in the community in which they are located, and that contribute very largely to the development and progress of the State, that are so purely private in their nature as not to admit of any doubt about the matter. Such, for example, are manufacturing or commercial enterprises established and maintained by private individuals or corporations for purely private gain.

"There are also many purposes for which public money may be appropriated from the use

of which some persons derive more benefit than others, but this circumstance does not detract from the fact that their chief function is to administer to the public good, although the enjoyment and advantages derived from their maintenance are not distributed equally, even between members of the public who are situated alike or in the same class. If it were essential to the establishment or existence of an enterprise to be set up and sustained by public aid that all members of the public or all members of any class should derive from it the same or like benefits or advantages, then it would be entirely impossible to describe a public enterprise in aid of which public funds might be set apart.

" \* \* \* It is not, however, necessary that the whole body of the contributing public shall be directly benefited or receive the advantages accruing from the establishment of the object in aid of what public funds may be set apart. It will be sufficient if it should be of such a character as that it promotes the general welfare and prosperity of the people who are taxed to sustain it.

\* \* \* \* \*

"Measured by the standards outlined above, we have no doubt that public funds may be set apart to develop and promote the general agricultural interests of the State by the creation of farm bureaus, for it is a matter of common knowledge that in the agricultural interests of the State lie its chief source of wealth, and that the prosperity of the State springing from this source contributes to the growth and importance of every other industry in the State, as well as to the comfort and happiness of the whole people; and it is in recognition of this indispensable and thoroughly known

July 2, 1945

fact that appropriations made to foster, encourage and stimulate the agricultural interest of the State have always been regarded as made for a public purpose."

Applying the same reasoning to the purposes for which the money appropriated in the bill under consideration is to be used, we believe the statute under which disbursements are to be made to be constitutional. We further believe that inasmuch as the payment of the premiums is for the purpose of encouraging the immediate production, distribution and use of superior breeding stock, that such appropriation merely follows the past trend of legislative recognition of the importance of the agricultural industry of the State of Missouri and its contribution to the welfare of all of the citizens of the State.

#### CONCLUSION

In the premises, we are of the opinion that the appropriation for the payment of cash premiums as provided by Section 14288, R. S. Mo. 1939, as found in Section 57a of House Bill No. 428, is not in contravention of any constitutional prohibition against granting public money for the aid of individuals.

Respectfully submitted,

WILL F. BERRY, Jr.  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

WFB:HR