

STATE COUNCIL OF DEFENSE: State of Missouri may not advance money to federal government to use in payment of defense supplies to be purchased by federal government, but state may reimburse federal government if appropriate legislation is enacted.

CONSTITUTIONAL LAW:

June 6, 1951

6-6-51

Honorable Forrest Smith  
Governor of the State of Missouri  
Jefferson City, Missouri



Dear Sir:

This department is in receipt of your request for an official opinion, which reads as follows:

"I have been requested by Honorable Millard Caldwell, administrator of the Federal Civil Defense Administration, Washington, D. C., to seek an opinion from the Attorney General of our state on the following questions:

"(1) Whether or not the State of Missouri can legally pay into the U. S. Treasury, in trust, advance sums to be applied in payment of our share of the cost of defense equipment and supplies, and

"(2) Whether or not this state can legally reimburse the Federal government for our share in any instance where the initial outlay is wholly paid from the U. S. Treasury.

"A copy of the administrator's letter is enclosed.

"Would you kindly render your opinion on these two questions?"

Sections 26.110 and 26.120, R.S. Mo. 1949, are the only statutory provisions providing for and regarding the State Council of Defense. Section 26.110 provides:

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"The governor is hereby authorized and empowered in time of emergency or public need in the nation or the state to create by proclamation a state council of defense, hereinafter designated as 'the council,' for the general purpose of assisting in the coordination of the state and local activities related to national and state defense. Whenever he deems it expedient, the governor may, by proclamation, dissolve or suspend such council or reestablish it after any such dissolution or suspension."

Section 26.120 provides:

"The council shall consist of not less than fifteen members appointed by and holding office during the pleasure of the governor. The governor shall serve as chairman of the council. He shall designate one of the members of the council as vice chairman. Appointment of members shall be made without reference to political affiliation and with reference to their special knowledge of industry, agriculture, consumer protection, labor, education, health, welfare, or other subjects relating to national or state defense."

The present General Assembly, by Section 2 of House Bill No. 1, appropriated money to the State Council of Defense, which appropriation reads as follows:

"There is hereby appropriated out of the State Treasury, chargeable to the General Revenue Fund, the sum of Seventy-five Thousand Dollars (\$75,000.00) or so much thereof as may be necessary, for the use of the State Council of Defense, created by Act of the General Assembly (Laws 1941, Page 669), to pay the expenses of civilian defense, including salaries, wages, postage, rent, telegraph, telephone, express, freight, traveling expenses, stenographers, janitors, cost of supplies for emergency Medical Service, Fire Protection, Police,

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Air Raid Wardens, Emergency Public Utilities, Industrial Plant and Personnel Protection, Air Raid Warning Service, Aircraft Warning Service, purchase of films, purchase and rental of motor car equipment, office equipment, printing, stationery, Federal Old-Age and Survivors Insurance, and for all other purposes necessary to the operation of the State Council of Defense and its services for the period beginning January 3, 1951 and ending June 30, 1951."

We will take up the questions in the order in which they are set forth in the request.

I.

State of Missouri may not advance money to the United States to be applied in payment for defense equipment and supplies to be purchased.

At the outset, it must be pointed out that there is no statutory authorization which permits the Council of Civil Defense to enter into any agreement such as is outlined in the first question of the request. While it is true that Section 39 of Article IV of the Constitution provides that "In all matters of public welfare the general assembly may provide by law for cooperation with the United States, or other states," still this section is not self enforcing because it specifically requires that the cooperation with the United States must be provided for by law. However, we believe that, even if there was such statutory authorization, the law would violate other sections of the Missouri Constitution.

Section 28 of Article IV of the Constitution of Missouri, 1945, provides as follows:

"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

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purpose of the appropriation and that there is in the appropriation an unencumbered balance sufficient to pay it. At the time of issuance each such certification shall be entered on the general accounting books as an encumbrance on the appropriation. No appropriation shall confer authority to incur an obligation after the termination of the fiscal period to which it relates, and every appropriation shall expire six months after the end of the period for which made." (Emphasis ours.)

The above section provides that for the comptroller to certify a requisition for payment there must be an obligation for the payment of money incurred. The purchase of the defense equipment and supplies by the Federal Civil Defense Administration will take place in the future. The State of Missouri, therefore, would not have incurred the obligation to pay for these supplies until the same are purchased, and for the Council of Civil Defense to withdraw money from the state treasury for these future payments would be in direct violation of the above constitutional provision.

It is further pointed out that Section 28 of Article IV of the Constitution, supra, provides that no obligation may be incurred after the termination of the fiscal period to which the appropriation relates.

It can be well seen that if money were to be advanced to the Federal Civil Defense Administration for the purchase of defense equipment and supplies, such equipment and supplies might not be purchased until after the termination of the fiscal period, to wit, June 30, 1951, and therefore an obligation would be incurred after the termination of the appropriation. Consequently, we believe that the State of Missouri cannot legally pay into the United States Treasury, in trust, advance sums to be applied in payment of defense equipment and supplies.

## II.

State of Missouri may legally reimburse the federal government for the state's share of the cost of defense equipment and supplies if appropriate legislation is enacted relative thereto.

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As we have pointed out in the first part of this opinion, there is at the present time no legislation authorizing the State of Missouri or the Council of Civil Defense to enter into any compact with the United States in regard to civil defense, nor is there any statutory authorization for the Council of Civil Defense to purchase defense equipment and supplies. The sole authority and power of the council is to assist "in the coordination of the state and local activities related to national and state defense."

While it is true that the appropriation act provides for the payment of costs of supplies for various civil defense purposes, still it is the rule in this state that legislation of a general character may not be included in an appropriation bill. State ex rel. Gaines v. Canada, 342 Mo. 121, 113 S.W. (2d) 783; State ex rel. Davis v. Smith, 335 Mo. 1069, 75 S.W. (2d) 828. However, we note that Senate Bill No. 66, which has been introduced in the General Assembly, provides as follows:

"On behalf of this state enter into reciprocal aid agreements or compacts with other states and the federal government, either on a state-wide or local basis. Such mutual aid arrangements shall be limited to the furnishing or exchange of food, clothing, medicine, and other supplies; engineering services; emergency housing; police services; national guard or state guard; health, medical and related services; fire fighting, rescue, transportation and construction services and equipment; personnel necessary to provide or conduct these services; and such other supplies, equipment, facilities, personnel and services as may be needed; reimbursement of costs and expenses on such terms and conditions as are deemed necessary shall be provided for in such agreements or compacts; \* \* \*"

We believe that if the above provision of the bill is passed, or one similar thereto is passed, this would be complete authority for the state to reimburse the federal government for defense equipment and supplies purchased by the federal government.

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CONCLUSION

It is therefore the opinion of this department that the State of Missouri may not pay into the United States Treasury, in trust, advance sums to be applied in payment of the cost of defense equipment and supplies to be purchased by the Federal Civil Defense Administration.

It is further the opinion of this department that the State of Missouri may legally reimburse the federal government for the state's share of the cost of defense equipment and supplies purchased by the federal government if legislation is enacted authorizing such expenditure and money is appropriated by the General Assembly for such purpose.

Respectfully submitted,

ARTHUR M. O'KEEFE  
Assistant Attorney General

APPROVED:

  
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J. E. TAYLOR  
Attorney General

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