

APPROPRIATIONS: Comptroller should not certify any disbursements under H.S.H.R. No. 13 until termination of pending litigation.



March 11, 1953

Honorable Newton Atterbury  
State Comptroller and  
Director of the Budget  
Capitol Building  
Jefferson City, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this department dated February 26, 1953, reading as follows:

"We have noted in yesterday's Post Tribune Judge Blair had made a decision in the above mentioned case. We noted in the same newspaper article that Representative Hamlin, acting as attorney for Austin Hill, stated that he 'planned to file whatever motion was necessary to keep the case alive.'

"We assumed the Comptroller's Office should still refuse to certify for payment any requisitions on the two accounts involved. Your advice in this connection, however, will be appreciated."

The office of Comptroller was established by the adoption of the Constitution of Missouri, 1945, particularly Section 22, Article IV, reading in part as follows:

"The department of revenue shall be in charge of a director of revenue, and shall have divisions of collection,

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budget and comptroller, and other divisions as provided by law. \* \* \*  
The comptroller shall be director of the budget, and shall preapprove all claims and accounts and certify them to the state auditor for payment."

(Emphasis ours.)

The General Assembly, pursuant to the constitutional directive set forth, subsequently enacted what now appears as Chapter 33, RSMo 1949. With respect to the office of Comptroller the following appears as a part of Section 33.010, RSMo 1949:

"The governor, by and with the advice and consent of the senate, shall appoint a comptroller, who shall head the division of budget and comptroller and who shall be the director of the budget, and who shall be under the supervision and direction of the director of revenue, and shall serve as such without additional compensation. \* \* \* He shall also deposit with the director of revenue a bond, with sureties to be approved by the director of revenue, in the amount determined by the director of revenue payable to the state of Missouri, conditioned on the faithful performance of the duties of his office. \* \* \*"

Among the enumerated powers and duties of the division of the budget and comptroller, the following appears as Section (3) of Section 33.030, RSMo 1949:

"To preapprove all claims and accounts and certify them to the state auditor for payment. As a prerequisite to his preapproval of claims and accounts, the comptroller shall ascertain that such claims and accounts are regular and correct. Each such certification

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from the comptroller to the state auditor shall be accompanied by a copy of the invoice."

Penalty for failure to properly discharge the duties of his office, in addition to any action which might be brought upon his official bond, includes Section 33.200, RSMo 1949, reading as follows:

"If the comptroller shall knowingly certify any claims or accounts for payment by the auditor, not authorized by law, he shall, upon conviction thereof, be deemed guilty of a felony, and upon conviction shall be punished by imprisonment in the penitentiary for not less than two years nor more than five years."

We now advert to the matters contained in your letter of inquiry. You have designated the case as No. 13173; however, the ruling to which you have referred and which was entered by the Circuit Court for Cole County, Missouri, on February 25, 1953, was in case No. 13170. However, with certain exceptions the subject matter of the two actions were and are much the same. The only real difference is that a different resolution has been attacked in the different suits.

State of Missouri ex rel. Austin Hill v. Lester A. Vonderschmidt et al., No. 13170, in the Circuit Court for Cole County, Missouri, was and is an action brought to obtain a declaration as to the constitutionality of H.S.H.R. No. 13, adopted by the current General Assembly. In substance the resolution authorized certain investigations to be conducted by the House Appropriations Committee, the employment of personnel to aid and assist such committee in the investigations and purported to appropriate the sum of not to exceed Ten Thousand Dollars for the payment of necessary expenses incurred by such committee in the discharge of its duties in this regard.

The records of the Circuit Court for Cole County, Missouri, indicate that the entry made by the judge of such court on February 25, 1953, does not amount to a

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final appealable order or judgment terminating the litigation, and an amended petition has since been filed. Therefore, the constitutionality of the purported appropriation made under H.S.H.R. No. 13 remains a live question for judicial determination and one which will not be finally resolved until the termination of such litigation.

In the event that such resolution ultimately be held unconstitutional the appropriation purportedly made thereunder would, of course, be void and of no effect. Should this be the result, then the purported appropriation could not supply funds for the payment of the expenses incurred by the House Appropriations Committee in the discharge of the duties imposed upon it under the resolution. Without a valid appropriation, which as has been pointed out heretofore may not be finally determined until the pending litigation is ended, you, of course, as comptroller, would be unauthorized to certify any claim for payment of expenses incurred by the House Appropriations Committee and chargeable thereto. Your certification in these circumstances would amount to a breach of the conditions of your official bond rendering you liable for any claims so improperly certified for payment out of the treasury of the State of Missouri. In addition your action in this regard could possibly amount to such an act as would subject you to the criminal penalty provided in Section 33.200, RSMo 1949, cited supra.

#### CONCLUSION

In the premises we are of the opinion that the Comptroller should not preapprove and certify for payment out of the state treasury any account for necessary expenses incurred by the House Appropriations Committee under the provisions of H.S.H.R. No. 13 during such time as the constitutionality of the purported appropriation made in such resolution is subject to judicial inquiry.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Will F. Berry, Jr.

Yours very truly,

JOHN M. DALTON  
Attorney General

WFB, JR./fh