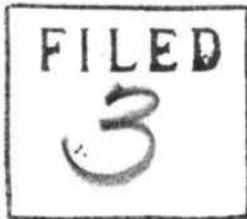


APPROPRIATIONS:

No statutory authority exists to permit the state to become obligated to pay the expenses of a band and drum and bugle corps designated by a particular Veterans' Organization in attending its National Convention.



July 7, 1953

Honorable Newton Atterbury
State Comptroller and
Director of the Budget
Department of Revenue
Jefferson City, Missouri

Dear Sir:

Reference is made to your recent request for an official opinion of this office which request reads as follows:

"We have been approached in regard to paying expenses of the St. Agnes Band and Drum and Bugle Corps for a trip to the National Am. Vets. Convention in New York City.

"We question the legality of the payment due to the following facts:

"1. Payment would be made out of appropriations for 1951-53, H. B. 433, Sec. 10.100. This was the Omnibus Bill that was not finally passed until May or June, 1952.

"2. The trip was made in August, 1951, before the bill became a law.

"3. The appropriation does not carry any relief or emergency clause.

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"If this is to be paid, such payment must be made prior to July 1, 1953, as the \$2,500.00 left in this appropriation expires as of the end of the present fiscal year.

"Your opinion in this matter will be appreciated."

Section 10.110, Laws of Missouri 1951, page 230, to which you refer reads as follows:

"Division of Resources and Development-for the advertising of Missouri.-
There is hereby appropriated out of the State Treasury, chargeable to the General Revenue Fund, the sum of Five Thousand Dollars (\$5,000.00) for the use of the Division of Resources and Development for the purpose of carrying out the program of the Division of Resources and Development in advertising Missouri by sending one band and one drum and bugle corps to be designated by the Veterans' Organization having the largest membership in the State of Missouri to its National Convention and for the purpose of sending one band and one drum and bugle corps to be designated by the Veterans' Organization with the next largest membership in the State of Missouri to its National Convention for the period beginning July 1, 1951 and ending June 30, 1953."

The import of this section as written, is that \$5,000.00 is appropriated for the use of the Division of Resources and Development for the purpose of carrying out the program of the Division in advertising the State of Missouri. The money is to be used in sending one band and one drum and bugle corps to the National Convention of each of the two largest Veterans' Organizations in the State. Such band and drum and bugle corps as may be designated by the particular Veterans' Organization.

As we understand the particular matter to which you refer, the St. Agnes Band and Drum and Bugle Corps was designated by the Am. Vets., a Veterans' Organization, and did attend the National Convention of such organization without the consent or

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approval of the Division of Resources and Development. In fact the only authority which the Division has exercised is a mere certification of the expenses of such trip to the comptroller for payment. That the legislature may appropriate money for the Division of Resources and Development for the purpose of carrying out its functions, there can be no doubt. However, it is our opinion that the General Assembly cannot in an appropriation bill control the mode or manner of discharging these functions or grant to a Veterans' Organization the power to designate a band and drum and bugle corps to attend its National Convention and bind the Division of Resources and Development to pay the expenses incurred. Such an attempt, we believe, would be general legislation, inconsistent with appropriation bills and repugnant to the Constitution.

Section 23 of Article III of Missouri Constitution 1945, provides as follows:

"Limitation of scope of bills-contents of titles-exceptions.- No bill shall contain more than one subject which shall be clearly expressed in its title, except bills enacted under the third exception in section 37 of this article and general appropriation bills, which may embrace the various subjects and accounts for which moneys are appropriated."

This provision has been on occasions before the Supreme Court for interpretation. In the case of State ex rel. Gaines v. Canada, et al., 342 Mo. 121, the court said:

"* * *Legislation of a general character cannot be included in an appropriation bill. To do so would violate Section 28 of Article IV of the Constitution which provides that no bill shall contain more than one subject which shall be clearly expressed in its title. There is no question but what the mere appropriation of money and the amendment of Section 9622, a general statute granting certain authority to the board of curators, are two different and separate subjects.* * *"

In the case of State ex rel. Davis v. Smith, 335 Mo. 1069, the court said:

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"Besides, legislation of a general character cannot be included in an appropriation bill. If this appropriation bill had attempted to amend Section 13525, it would have been void in that it would have violated Section 28 of Article IV of the Constitution which provides that no bill shall contain more than one subject which shall be clearly expressed in its title. There is no doubt what the amendment of a general statute such as Section 13525, and the mere appropriation of money are two entirely different and separate subjects. (State ex rel. Hueller v. Thompson, State Auditor, 316 Mo. 272, 289 S. W. 338.)"

While, although this appropriation measure might be construed so as to limit the use of the funds appropriated to the payment of the expenses of a band and drum and bugle corps designated by a particular Veterans' Organization in attending its National Convention, we find no general legislation authorizing such a designation or authorizing an obligation to be so incurred by the State and the contended obligation in this particular case was not incurred by the Division of Resources and Development in the discharge of its functions, assuming that such could have been done, a question upon which we do not express opinion.

Since we have determined that the expense to which you refer was not legally incurred, we need not discuss the fact that it was incurred prior to the passage of Section 10.110, supra, since it would have no effect upon the issue at hand.

CONCLUSION

Therefore it is the opinion of this office that there exists no statutory authority under which the State may incur an obligation to pay the expenses of a band and drum and bugle corps in attending the National Convention of a Veterans' Organization under circumstances where the band and drum and bugle corps is designated by a particular Veterans' Organization.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. D. D. Guffey.

Very truly yours,

JOHN M. DALTON
Attorney General