

March 8, 1972

OPINION LETTER NO. 19  
Answer by Letter - Burns

Mr. Joseph Jaeger, Jr.  
Director of Parks  
Missouri State Park Board  
Post Office Box 176  
Jefferson City, Missouri 65101



Dear Mr. Jaeger:

This is in answer to your recent request asking whether the Park Board is authorized to spend for acquisition of real property during the 1971-1972 appropriation period the sum determined by application of the formula found in Section 47 of Article III of the Missouri Constitution out of the appropriations to the State Park Board for the fiscal year 1971-1972. There are no appropriations to the Park Board for real property acquisitions out of general revenue for such period.

Section 47 of Article III of the Constitution of Missouri provides as follows:

"For twelve years beginning with the year 1961, the general assembly shall appropriate for each year out of the general revenue fund, an amount not less than that produced annually at a tax rate of one cent on each one hundred dollars assessed valuation of the real and tangible personal property taxable by the state, for the exclusive purpose of providing a state park fund to be expended and used by the agency authorized by law to control and supervise state parks, and historic sites of the state, for the purposes of the acquisition, supervision, operation, maintenance, development, control, regulation and restoration of state parks and state park property, as may be determined by such agency;

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and thereafter the general assembly shall appropriate such amounts as may be reasonably necessary for such purposes.

"The amount required to be appropriated by this section may be reduced to meet budgetary demands provided said appropriation is not less than that appropriated for the prior similar appropriation period."

Under the clear provisions of Section 47 of Article III of the Constitution above quoted, the general assembly is mandatorily required to appropriate a minimum amount under the formula found in such section for the exclusive purpose of providing a state park fund to be expended and used by the agency authorized by law to control and supervise state parks and historic sites of the state for several purposes including acquisition of state parks and state park property as may be determined by the agency. The agency which has such power is the State Park Board, Section 253.020, RSMo. Application of the formula in such constitutional provision required that the legislature appropriate under such section for the fiscal year 1971-1972, at least the sum of \$1,133,911.63. In view of the fact that the previous years appropriation for park purposes out of the general revenue was greater than such amount, the last paragraph of such section has no application to the required appropriation for the fiscal year 1971-1972, and it follows therefore, that the constitutional mandate required a minimal appropriation, under Section 47 of Article III of the Constitution, of \$1,133,911.63 out of general revenue to be expended by the State Park Board for the various purposes listed in such section as may be determined by the Park Board. The appropriation by the legislature of an amount in excess of this figure out of the general revenue fund constituted a compliance by the general assembly with the constitutional requirement as to appropriations out of the general revenue fund for the State Park Board.

The question then arises as to the authority of the general assembly to provide in the appropriation acts that the moneys thereby appropriated to the State Park Board from the general revenue fund should be spent only for designated purposes, more limited in scope than those purposes set forth in Section 47 of Article III.

It is our view that to the extent of the appropriation from general revenue required to be made to the Park Board by the general assembly under the provisions of Section 47 of Article III of the Constitution, that is, the sum of \$1,133,911.63, the attempted limitation on the expenditure of such sum by the general assembly in the appropriation acts is unconstitutional, void and of no effect.

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It is our view that the Park Board has authority to spend the sum of \$1,133,911.63 out of the appropriations to the Park Board from general revenue for any purpose or purposes set forth in Section 47 of Article III of the Constitution in the discretion of the Park Board.

An analogous situation confronted the Michigan Supreme Court in 1942 when it was asked to rule on the validity of an appropriation containing a prohibition on salary increases for state civil service employees. That state's constitution established a civil service commission to ". . . classify all positions in the state civil service according to their respective duties and responsibilities, fix rates of compensation for all classes of positions [and], approve or disapprove disbursements for all personal services. \* \* \*" The constitution further directed the legislature to appropriate to the civil service commission annually a fixed amount computed on the preceding year's civil service payroll for the purpose of the commission executing its constitutional powers. The Michigan Supreme Court ruled, that, although the constitutional provision was not self-executing and was not itself an appropriation because it envisioned initiation of the appropriation by the legislature, still the constitution placed a mandatory duty upon the legislature to appropriate a minimum sum to the civil service commission without conditions usurping the authority vested in the commission to fix rates of compensation for the state civil service employees. The prohibition on salary increases attached to the appropriation was ruled invalid. Civil Service Commission of Michigan v. Auditor General, 5 N.W.2d 536 (Mich. 1942).

We need not consider whether Section 47 of Article III is a self-enforcing constitutional appropriation because the legislature discharged its constitutional duty to appropriate a certain minimum sum to the Park Board for the purposes stated in the Constitution and cannot as to this sum exercise the judgment which the Constitution has placed in the Park Board. Accordingly, it is our opinion that the Park Board may expend up to the amount of \$1,133,911.63 appropriated general revenue funds for the fiscal year 1971-1972 for any of the purposes specified in Section 47, Article III of the Missouri Constitution. The determination of the purpose or purposes for which such amount is to be expended is in the discretion of the Park Board. Real property acquisition is among such purposes.

Very truly yours,

JOHN C. DANFORTH  
Attorney General