

Appropriation to Kansas City Court of Appeals not sufficient to cover payment of insurance.

11-6  
November 5, 1935.

Honorable Hopkins B. Shain,  
Presiding Judge,  
Kansas City Court of Appeals,  
Kansas City, Missouri.



Dear Judge:

This department is in receipt of your request for an opinion as to the following state of facts:

"State Auditor Smith has returned insurance bills and refuses to pay same upon my certificate without an opinion by you.

"My position is that a Constitutional court has the right to decide upon questions of whether or not it protects its library by insurance.

"We have always concluded that insurance came under the head of 'General Expense'; that in the appropriation bill you will note there is a semi-colon after 'For General Expense'; for communication, printing and binding, etc., a comma appears after each other item mentioned.

"Our conclusion is that as to matters of general expenses that a court of record can be trusted with exercising sound discretion. By noting Section 1904, R.S. 1929, you will note this language: 'All of which expenditures as also for stationary and other necessary outlay \* \* \* shall be paid by the State, etc.'

"It is our conclusion from the reading of the language following the above that the certificate of the Presiding Judge constituted such a voucher as makes it mandatory upon the Auditor to issue the warrant.

"It appears to us that to deny this court the right to determine as to small matters of 'necessary expense', is to deny this court is a constitutional court. Let me cite for your consideration, Ewing v. Vernon County, 216 Mo. l.c. 687 (a). The case is not directly in point, but in that the officials were ministerial officers you can summarize as to the Court's language had the matter have hinged upon the right of a court of record to determine matters of necessary expense been involved.

"The Kansas City Court of Appeals have for years concluded that insurance of our excellent library was a necessary expense in that if destroyed, we could, with the insurance, supply the absolutely necessary tools with which we work without awaiting convening of the legislature which meets but biennially, and further await the pleasure of that body when it met.

"We are sending the certified bills herewith in the hope that you will immediately attach thereto such official mandate as will allow us to dispose of this matter. Please send the bills, with your approval, if approved by you, direct to the State Auditor. \* \* \* \*"

Article X, Section 19 of the Constitution of the State of Missouri provides:

"No moneys shall ever be paid out of the treasury of this State, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made, or a warrant shall have issued therefor, within two years after the passage of such appropriation act; and every such law, making a new appropriation, or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such sum or object. A regular statement and account of the receipts and expenditures of all public money shall be published from time to time."

Section 11421, R.S. Mo. 1929 provides as follows:

"No warrant shall be drawn by the auditor or paid by the treasurer, unless the money has been previously appropriated by law; nor shall the whole amount drawn for or paid, under any one head, ever exceed the amount appropriated by law for that purpose."

Laws of Missouri 1935, Section 5, subsection D, page 416, provides:

"For general expense; for communication, printing and binding, transportation of things, and contingent and other general expense, including rent and the expense of removing to new court house building. Materials and supplies; laundry, cleaning and sanitation supplies, light, heat, power and water, stationery and office supplies...\$8,280."

If it is possible for the insurance bills that you speak of to be paid under the appropriation to the Kansas City Court of Appeals, it necessarily must be paid under the foregoing section of the Appropriation Act.

It is true, at the outset, that the Legislature used the term "general expense". Immediately after the use of this term, however, it said that such term would include various items and proceeds to enumerate such items. The term "general expense" is a broad term and used by itself would have been broad enough to include all of the items enumerated in Section D. When the Legislature, however, followed the words "general expense" by the enumeration of the expenses found in Section D, we believe that such enumeration limited and qualified the scope of the term "general expense". If the Legislature had not intended to limit the term "general expense" and to confine it to the enumerated items, then it would have been useless for the legislature to have made such enumeration, because the term "general expense" unrestricted would have been sufficiently broad to cover all of the items listed in Section D.

In the third line of subsection D appear the words

"contingent and other general expense"; we do not, however, believe that these words are of any assistance in making the appropriation cover the question of insurance. The general rule is that where general words are followed by particular words, the general words will be restricted and limited to the particular words used. This rule has been applied in the construction of appropriations. In State ex rel. v. Dierkes, 214 Mo. 578, the Supreme Court had for consideration an appropriation under the St. Louis Charter. The words in that appropriation which the relator relied upon were "other expenses of the House of Delegates". The court, in discussing the matter, said at page 591:

"Now take either of the two appropriation ordinances in evidence, for they are both the same in words, except as to the last clause, we have no specific appropriation for this work or for this relator. Relator contends that the words 'other expenses of the House of Delegates', are sufficient to authorize the payment of this money out of the unexpended balance in that fund. The whole clause of the ordinance reads:

'Publishing proceedings,  
printing, stationery,  
office expenses, furniture,  
rent or telephone  
and other expenses of  
House of Delegates...\$8,000.'

"To our mind the rule of ejusdem generis fully applies here. The term 'other expenses' means expenses of the character theretofore mentioned in that clause of the appropriation act and does not include an appropriation for work of the character performed by relator. To hold that it did include such would be to nullify the provisions of Section 14, Article 5 of the city charter, supra."

Following the above decision, therefore, we are of the opinion that money appropriated by Section D can only be used for the purposes enumerated in Section D, or for items by reason of the similarity of which can be said to come within the enumerated classes under the rule of ejusdem generis. We do not believe that premiums for insurance, whether it be fire, liability, theft or otherwise, are similar enough to the enumerated items to bring them within the provisions of the appropriation.

Nov. 5, 1935.

CONCLUSION

In view of the foregoing, it is the opinion of this department that the Appropriation Act to the Kansas City Court of Appeals does not include the payment of premiums for insurance on the library of the Kansas City Court of Appeals.

Respectfully submitted,

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Assistant Attorney General.

APPROVED:

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ROY MCKITTRICK,  
Attorney General.

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