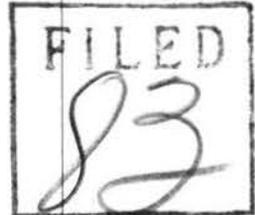


PENSIONS: Judgment for old age assistance
for 1937 and 1938 may be paid
OLD AGE ASSISTANCE: out of the appropriation for the
payment of old age assistance or
pensions for the years 1939 and 1940.

January 11, 1940

Hon. Forrest Smith
State Auditor
Jefferson City, Missouri



Dear Sir:

This will acknowledge receipt of your request for an official opinion under date of December 11, 1939.

Restating your request - On the 30th day of November, 1937, Maude Gibbons Galvin was removed from the old age assistance roll by the State Social Security Commission for the reason that she was not 70 years of age. This claimant duly appealed to the Commission for a hearing, and after the hearing, the Commission refused to reinstate her on the roll. An appeal was duly taken to the Circuit Court and that court ruled that the claimant was 70 years of age in November, 1937, and was qualified in every other respect for old age assistance and restored her to the roll as of November 30, 1937. The State Social Security Commission appealed from this finding and the Kansas City Court of Appeals affirmed the decision of the lower court and overruled a Motion for a Rehearing on June 19, 1939.

You now inquire as to whether or not you can legally draw a warrant on the state treasury payable to Maude Gibbon Galvin for old age assistance for the period from November 30, 1937 to December 31, 1938, upon proper requisition of the State Social Security Commission.

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The Springfield Court of Appeals in the case of Hughes v. State Social Security Commission of Missouri, 128 S. W. (2d) 671, l. c. 673, in holding that the trial court was within its jurisdiction in restoring said claimant to the roll as of the date she was stricken therefrom, said:

"We also think and hold that the trial court was within its jurisdiction in holding as of the date of the trial October 20, 1938, that the applicant 'is entitled to all the assistance which she was drawing at the time of being stricken from the rolls.' "

Also, the Kansas City Court of Appeals in the case of Galvin v. State Social Security Commission of Missouri, 129 S. W. (2d) 1051, l. cl 1053, said:

"We conclude that when the court adjudged that respondent be restored to the roll the law wrote into the judgment that such restoration was of the date of the erroneous removal and that the words in the judgment, 'as of November 30, 1937', were unnecessary and added nothing to the force of the judgment."

Therefore, there is no question as to the legality of the judgment.

The question boils down to this. Can this judgment be legally paid out of the 1939-40 appropriation as passed by the Sixtieth General Assembly for the payment of old age assistance or pensions?

The fact that it did not become an obligation on the state until June 19, 1939 ~~was~~ contended by the

State Social Security Commission will not be passed upon at this time for the reason that it is of no importance now since same can not be paid out of the 1937-38 appropriation for the reason that the appropriation lapsed on the last day of December, 1938. The law is well established that an appropriation act expires at the expiration of two years unless it is made a continuing appropriation, and in this case that was not done.

Article 10, Section 19 of the Missouri Constitution provides that no money shall ever be paid out of the state treasury except in pursuance of an appropriation, and further prohibits the payment out of any appropriation after the expiration of two years. Article 10, Section 19 of the Constitution of Missouri reads as follows:

"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."

In State ex rel v. Hays, 49 Mo. 604, l. c. 605, in holding that the treasurer should not honor any warrant drawn without an appropriation when said appropriation is exhausted, the court said:

"The treasurer cannot be required to pay out the funds intrusted to his keeping unless appropriated; as the minister of the State, with no discretionary powers, he must disburse when and as, and only when and as, the law-making power shall direct. (Const. Mo. Art. XI, Sec. 6) He usually looks only to the warrant, but is not bound by that if drawn without an appropriation. And if an appropriation lawfully made be exhausted, his payments must necessarily stop. Hence that part of the return denying, in effect, that there is money in the treasury appropriated for the purpose, furnishes a complete excuse for his refusal."

Also, in State v. Holladay, 64 Mo. 526, l. c. 527, the court, in holding that an appropriation possesses no validity, force or even exists after the lapse of two years, and that a warrant cannot be drawn without an appropriation, said:

"From a consideration of these two sections, it seems quite obvious that no appropriations of money find recognition in the constitution except 'regular appropriations,' and that such cannot be made except at regular legislative sessions, occurring biennially. This view of the matter receives abundant confirmation in the prohibitions of section 19 of article X, that '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,' etc.

"The act of March, 1870, is clearly inconsistent with the provisions of the constitution above quoted, and in consequence thereof, and in conformity with what the schedule ordains, the provisions of that act ceased when the constitution was adopted. For although the sections of the constitution just cited, do not in express and direct terms inhibit the auditor from drawing his warrant in favor of a claimant who relies on an appropriation more than two years old, yet those sections, by necessary and inevitable implication, accomplish the same result; for it cannot, with any show of reason, be claimed that a warrant can be drawn without an appropriation; but as just seen, no appropriation possesses any validity, force, or even existence, after the lapse of two years."

Likewise, in the case of *State ex rel. v. Gordon*, 236 Mo. 142, l. c. 157 and 158, the court in holding that the treasurer is prohibited from paying any warrant out of any fund under his management, except in pursuance of regular appropriation made by law, said:

"We cannot agree to that contention. It is provided by section 43, article 4 of the Constitution of this State that: 'All revenue collected and moneys received by the State from any source whatsoever shall go into the treasury, and the General Assembly shall have no power to divert the same, or to permit any money to be drawn from the treasury, except in pursuance of regular appropriations made by law.' And by section 19, article 10, that: 'No moneys shall ever be paid out of the treasury of this State, or of 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 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.'

"The language of the foregoing provisions of the Constitution is clear and explicit and forbids the payment of money from the State treasury 'received from any source whatsoever' or 'of any funds under its management' except in pursuance of regular appropriations made by law. Because of this constitutional inhibition we have no difficulty in deciding that in the absence of an appropriation made by the General Assembly for that purpose no funds could be lawfully paid out of the State treasury for the support and maintenance of the game department, nor would ~~relator~~ be entitled

to the audit and allowance of his accounts for salary and expenses."

Therefore, since it is useless to look to the appropriation for 1937 and 1938 in payment of this judgment for the reason same has expired, we will examine the appropriation act for payment of the old age assistance as passed by the Sixtieth General Assembly, and found on page 97, Laws of 1939, to determine if this judgment may be paid out of that appropriation, or if that act restricts the payment of Old Age Assistance to such assistance that may accrue for the years 1939 and 1940. Said appropriation act, including the title, reads in part as follows:

"AN ACT appropriating money to the State Social Security Commission, complying with an Act passed by the 59th General Assembly - 1937 Laws of Missouri, pages 467 to 478 inclusive and as amended by Acts of the 60th General Assembly creating a Social Security Commission, and defining its duties as follows: Pensions or assistances to persons 65 years of age or over, who are incapacitated from earning a livelihood and are without means of support, aid to dependent children, aid or relief in cases of public calamity, administration of purposes of said Act, Child Welfare services, and for the care of the Children's Home at Carrollton for the years 1939 and 1940, with an emergency clause.

"Old age assistance, aid to dependent children, aid or relief in case of public calamity. There is hereby appropriated out of the State Treasury, chargeable to

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the General Revenue fund, the sum of Twenty-nine Million Seven Hundred Fifty Thousand Dollars (\$29,750,000.00) payable to the State Social Security Commission, complying with an Act passed by the 59th General Assembly - 1937 Laws of Missouri, pages 467 to 478 inclusive and as amended by Acts of the 60th General Assembly creating a Social Security Commission and defining its duties as follows:

"Pensions or assistance to persons sixty-five years of age or over, who are incapacitated from earning a livelihood and are without means of support.....\$17,500,000.00

Aid to Dependent Children.....3,250,000.00

Aid or relief in case of public calamity.....6,500,000.00"

In the case of State ex rel. Smearing v. Thompson, 45 S. W. (2d) 1078, l. c. 1078 and 1079, a similar question was raised with reference to the payment of a blind pension. In that case the claimant was removed from the roll on April 1, 1926. Thereafter, on January 11, 1929, the Blind Commission ordered her name restored to the roll as of September 12, 1928, from which date a regular quarterly payment was made to said claimant. Thereafter, on May 8, 1931, the Blind Commission ordered said claimant to be reinstated on the roll as of April 1, 1926. However, in that case the State Auditor refused payment of the pension for the period between April 1, 1926, the date she was removed from the roll, and September 12, 1928, the date she was restored thereon,

for the reason that the current appropriation was not available for that purpose. In that case the appropriation act was very much like the appropriation act for the payment of old age assistance for the years 1939 and 1940.

The court, in that case, held that the claimant was entitled to receive her pension between those dates hereinabove referred to, out of the current appropriation for the reason that the object of the appropriation act was to pay pensions to deserving blind as provided in Chapter 51 of the Revised Statutes of Missouri, 1929, and that the following language used in the title of the appropriation act

"for the biennial period beginning on the first day of January, 1931, and ending on the 31st day of December, 1932,"

merely limited the period within which the appropriation was available in conformity with Section 19 of the Constitution of Missouri, and has no reference to the time when the right to said pension for the payment of which the appropriation is made, should accrue. The court, in so holding, said:

"The Appropriation Act in question is entitled: 'An Act appropriating money to pay salaries, wages and per diem, for the original purchase of property, for the repair and replacement of property, for the operative expenses and other purposes of the commission for the blind, and to pay pensions to the deserving blind, for the biennial period beginning on the first day of January, 1931, and ending on the thirty-first day of December, 1932, with an emergency clause.' (Laws 1931, p. 64.)

"Section 2 of the act is as follows: 'There is hereby appropriated out of the state treasury, chargeable to the blind pension fund the sum of two million five hundred thousand dollars (\$2,500,000.00) or so much thereof as may be needed to pay pensions to the deserving blind as provided for in chapter 51, Revised Statutes, 1929.'

"Section 19, article 10, of the Constitution provides: 'No moneys shall ever be paid out of the treasury of this State, * * * except in pursuance of an appropriation by law; nor unless such payment be made * * * 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.'

"The only question here is whether the payment which relatrix seeks to have made out of the state treasury is within the 'object' to which the appropriation under the act just set out is to be applied. If it is a 'pension to the deserving blind as provided for in Chapter 51, Revised Statutes, 1929,' it is. The language in the title of the Appropriation Act, 'for the biennial period beginning on the first day of January, 1931, and ending on the thirty-first day of December, 1932,' if read into the act itself, merely limits the period within which the appropriations made shall be available, in conformity with said section 19 of the Constitution; it has no reference to the time when the right to the pensions for the payment of which the appropriation is made should accrue or had accrued, nor to the period for which such pensions are payable."

Hon. Forrest Smith

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January 11, 1940.

The Appropriation Act passed by the Sixtieth General Assembly for payment of the old age assistance or pensions follows the appropriation act for the payment of blind pensions just quoted. The title in the appropriation act for the payment of old age assistance for the years 1939 and 1940 in part reads as follows, "for the years 1939 and 1940."

CONCLUSION

Therefore, in view of the judgment of the Circuit Court restoring this claimant to the old age assistance roll as of November 30, 1937, the Kansas City Court of Appeals, affirming said judgment and the construction placed upon an appropriation act in *State ex rel. Smearing v. Thompson*, very similar to the one in question by the Supreme Court en banc, holding that blind pensions accruing for 1926, 1927 and 1928 may be paid out of the biennial appropriation for 1931 and 1932, it is the opinion of this Department that any part of this unpaid judgment should be paid out of the 1939 and 1940 appropriation act as passed by the Sixtieth General Assembly for the payment of old age assistance or pensions.

Respectfully submitted,

APPROVED:

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