

APPROPRIATIONS: Section 5 of House Bill No. 556 valid.

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July 22, 1941  
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Honorable Forrest C. Donnell  
Governor of Missouri  
Jefferson City, Missouri

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Dear Governor:

In reply to your request for an opinion with reference to Section 5 of House Bill No. 556, appropriating certain moneys for the payment of aid to dependent children, we respectfully submit the following.

Section 5 of House Bill No. 556 appropriates Four Million Five Hundred Thousand Dollars (\$4,500,000.00) out of the state treasury, chargeable to the general revenue funds, for the payment of aid to dependent children. The Federal Government matches the state funds dollar for dollar, and Section 5 of House Bill No. 556 purports to appropriate the Federal Funds for that purpose. Section 5 is as follows:

"Section 5. Federal aid to dependent children. The State Social Security Commission shall have power to receive and disburse all allotments and contributions of funds from the Federal Government for the benefit of citizens and residents in the State of Missouri entitled under the provisions of the Aid to Dependent Children to participate in the distribution of any funds under rules and regulations as may be prescribed by Federal authority for the allotment and distribution of such funds, and should said Commission be required by any law of this State, or new rule or regulations of the Federal authorities to deposit any such funds in the State Treasury, then, and in that event all such funds so de-

posited in the State Treasury shall stand, and are hereby appropriated to said Commission to be used and applied in the manner and for the purposes set forth in an Act passed by the 59th General Assembly--1937 Laws of Missouri, pages 467 to 478 inclusive, and as amended by the Acts of the 60th General Assembly, and in accordance with the rules and regulations of the Federal authority under which funds may be deposited in the State Treasury. The State Auditor is hereby authorized and directed to pay such funds on order of the State Commission for the purposes for which the same were deposited, and for said purposes, there is hereby deposited in the State Treasury, coming from any allotments or contributions from the Federal Government during the period beginning January 1, 1941 and ending December 31, 1942 the sum of Three Million Five Hundred Thousand Dollars (\$3,500,000.00), or so much thereof as may be necessary for said purposes; the amounts hereby appropriated being in addition to the appropriations made by Section 1 of this Act."

Article IV, Section 43 of the Missouri Constitution provides:

"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 money to be drawn from the treasury, except in pursuance of regular appropriations made by law. \* \* \* \* \*"  
(Underscoring ours.)

Article X, Section 19 of the Missouri Constitution provides:

"\* \* \* 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. \* \* \* \* \*"  
(Underscoring ours.)

The first of the above constitutional provisions clearly requires that all money received by the State, from any source whatsoever, shall go into the treasury. These Federal funds are certainly money received by the State and the constitutional provisions should set at rest the doubt which the Legislature seemed to have entertained concerning where this money should be deposited. Section 5, supra, however, requires it be deposited in the state treasury if the same should be required by any law of this State. Article IV, Section 43, makes that requirement, and therefore, all funds received by the Federal Government for the participation in the State's aid for dependent children program must be deposited in the treasury.

The second constitutional provision, above cited, requires that an appropriation act "shall distinctly specify the sum appropriated and the object to which it is to be applied." It will be noted that Section 5, supra, bears an opening statement as follows: "Federal aid to dependent children." This section title was placed there by the Legislature.

This section purports to authorize the State Social Security Commission to receive and disburse all funds received by the state from the Federal Government for the benefit of the citizens and residents in this state for the purpose of providing aid to dependent children. Said section then, in line 12, provides "all such funds \* \* \* \* \* shall stand and are appropriated to said Commission." We think that the title of Section 5, when considered in connection with reference made in line 6 of "aid to dependent children" sufficiently specifies the object of this appropriation, in that it is for the purpose of making payments to dependent children as provided under the laws of this state. This purpose can be gleaned without resorting to the further specifications by reference to another law in lines 15, 16 and 17 of Section 5, and therefore, that

portion of Article X, Section 19 of the Constitution, wherein it is provided that "it shall not be sufficient to refer to any other law to fix (the) \* \* \* object" of an appropriation, does not cause Section 5 to be wholly void. It is a familiar rule that even though a portion of an act is void, if enough remain to carry out the purpose of the Legislature, then that remainder will be held valid. Leaving out the reference to other laws to ascertain the object of the appropriation, there remains a sufficient specification of the object to which the appropriation is to be applied and we therefore think Section 5 is sufficient in this respect.

As pointed out above, Article X, Section 19 of the Constitution requires that an appropriation act should distinctly specify the sum appropriated, and it will be noted that Section 5 contains no reference to any definite sum of money except the figure of \$3,500,000.00, provided in line 28 thereof. However, that figure is not set out as an amount appropriated. That figure is used in connection with authorizing and directing the State Auditor to pay over certain funds to the State Social Security Commission, and purports to deposit \$3,500,000.00 in the state treasury in order that the auditor can make such payments.

Section 9414, R. S. Missouri, 1939, provides the authority and duty of the auditor with respect to drawing his warrant in payment of allotments made to dependent children. Section 9415 provides that the special fund in the treasury for payment of this aid shall "consist of moneys appropriated by the state, and such moneys as may be received from the Federal Government \* \* \*." Since there is no limitation fixed, this latter provision must necessarily include all Federal funds. These statutes cannot be changed by an appropriation act and therefore that portion of Section 5 purporting to authorize the auditor to do certain things and only directing the deposit of \$3,500,000.00 of Federal funds in the treasury for the purpose of aid to dependent children is void. State ex rel. v. Smith, 75 S. W. (2d) 828 (Mo. Sup.)

This view, then, leaves the appropriation act specifying the object of the appropriation and appropriating "all such funds," that is, the funds received from the Federal Government. "This question remains as to whether or not the language "all such funds" is in compliance with the Constitution, which requires the act "to distinctly specify the sum appropriated."

In State ex rel. Toomey v. State Board of Examiners, 238 P. 316 (Mont.) the appropriation was for a "sufficient amount to meet the principal and interest payments" on certain bonds. It was contended that such was not a "specific" appropriation as was required by the Constitution. The court ruled against this, saying l. c. 321:

"The rule that 'that is certain which can be made certain' applies to appropriations."

In 59 C. J., p. 250, Section 389, we find this, with reference to the need of an appropriation to state a specific amount:

"Even where a specification of the amount is required, it is not essential or vital to an appropriation that it should be for an amount definitely ascertained prior to the appropriation; and an appropriation, the amount of which will be made certain by a mere mathematical computation, if the provisions of the act are carried into effect, sufficiently complies with this requirement. Where such a requirement is recognized, if there is no constitutional provision requiring the fixing of a maximum in dollars and cents, an appropriation may be valid when its amount is to be ascertained in the future from the collection of the revenue; but it cannot be when it is to be ascertained only by the requisitions which may be made by the recipients."

The amount of money received from the Federal Government is certain, because it is capable of being ascertained. That is all that is required.

Hon. Forrest C. Donnell

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Section 5 is therefore sufficient by only considering that portion of the section down to the word "Commission" in line 14. All the rest may be disregarded as contrary to the Constitution and statutes.

Respectfully submitted,

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APPROVED:

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LLB/rv  
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