

APPROPRIATIONS:  
DEPARTMENT OF  
AGRICULTURE:

Salaries of employees under the Commissioner of Agriculture must be paid from the specific appropriation for each department under the Commission.

July 28, 1941

7/29



Honorable John W. Ellis, Commissioner  
Department of Agriculture  
Jefferson City, Missouri

Dear Sir:

We are in receipt of your request for an opinion from this department under date of July 28, 1941, which reads as follows:

"Under the provisions of House Bill No. 581, Section 25, there is appropriated to the State Department of Agriculture for its use in paying the salaries and expenses connected with the work of the State Entomologist as set out in Article 3, Chapter 102, and designated as the Missouri Plant Law, the respective sums of:

|                                |                  |
|--------------------------------|------------------|
| "A. Personal Service..         | \$30,000.00      |
| B. Additions.....              | 500.00           |
| C. Repairs & Replacements..... | 500.00           |
| D. Operation.....              | <u>19,000.00</u> |
| Total.....                     | \$50,000.00      |

"Under Section 26, House Bill No. 581, there is appropriated for the Department of Agriculture:

|                                |                  |
|--------------------------------|------------------|
| "A. Personal Service..         | \$150,500.00     |
| B. Additions.....              | 1,500.00         |
| C. Repairs & Replacements..... | 1,500.00         |
| D. Operation.....              | <u>82,050.00</u> |
| Total.....                     | \$235,550.00     |

"It is my desire as Commissioner of Agriculture, to operate my Department

as efficiently and economically as possible.

"It is my opinion that the fees which will be paid into the Agricultural Fees Fund will provide ample moneys with which to operate.

"Due to the present economic outlook, the Governor has requested that all expenditures from the General Revenue Fund be kept at a minimum.

"In compliance with this request and the policy of this Administration, it is my desire to reduce to an actual needs basis the appropriation out of General Revenue. In order to do this, it is my thought that if some of the Personal Service and Operation classified in the division of Entomology, under Section 25, could be legally paid from the appropriation under 26, the appropriation under 25 could be reduced without fear of the payment for such services being denied from Section 26.

"Will you kindly give me an opinion as to whether or not I, as Commissioner of Agriculture, have the authority to certify as expenditures from the appropriation under Section 26 certain of the Personal Service and Operation costs of the Division of Entomology.

"I have in mind classifying the Assistant Entomologists as Inspectors and paying their salaries and expenses from the appropriation under Section 26. Also, of paying the clerical and stenographic employees connected with the work of the State Entomologist from Section 26.

"I respectfully ask your opinion as

to whether or not I can legally certify such items to the State Auditor and whether or not the State Auditor would be required to honor my requisition.

"Also, under the provision of Section 19, the State Veterinarian receives an appropriation for payment of certain employees including clerks and stenographers. Under section 14191, R. S. 1939, which reads in part, 'The Commissioner of Agriculture shall have charge of all clerical work pertaining to the Veterinary Service', it would appear that the office expenses such as clerks and stenographers could be paid from the appropriation as set out in Section 26 of House Bill No. 581.

"Will you kindly advise me if this could be done. Would appreciate a reply to this letter as soon as possible as the Budget Officer is at this time awaiting an opinion on these matters, before finally setting up the funds for this Department."

Article X, Section 19 of the Constitution of Missouri provides 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."

The above section was construed in *Nacy v. Le Page*, 111 S. W. (2d) 25, l. c. 26, where the court said:

"\* \* \* \* The state treasurer, in his official capacity and in the funds of the state treasury, has no goods, moneys, or effects of any private citizen in his custody, nor does he owe a debt from the treasury to any one. He is a custodian of public funds, raised by taxation, which belong to the state. His duty is to pay out these funds only 'in pursuance of an appropriation by law' which 'shall distinctly specify the sum appropriated, and the object to which it is to be applied.' Section 19, article 10, Constitution.  
\* \* \* \* \*"

Under the above holding it specifically states that the appropriation "shall distinctly specify the sum appropriated, and the object to which it is to be applied." Under the above holding and in accordance with your request in which you state that certain appropriations are made under Section 25, House Bill No. 581, and that you intend to pay employees as set out in the State entomology or Missouri Plant Law from appropriation under Section 26 of House Bill No. 581, it is our opinion that you cannot follow this procedure. The employees under what is known as the Plant Law in Article 3, chapter 102, must be paid out of the appropriation of House Bill No. 581, Section 25.

Also, in the case of *State ex rel. v. Gordon*, 236 Mo. 142, l. c. 157, the Supreme Court of this state, in passing upon Section 19, Article X of the Constitution of Missouri, said:

July 28, 1941

"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 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.' \*\*\*\*\* "

In all of the appropriations which you described in your request, namely, Sections 25, 26 and 19 of House Bill No. 581, an appropriation was made for stenographers and clerks, but in some of the above sections it only included certain officers which are not mentioned in the other sections.

#### CONCLUSION

In view of the above authorities it is the opinion of this department that you, as Commissioner of Agriculture, cannot classify entomologist, associate state entomologist and assistant entomologist under Article 3, chapter 102, of the Missouri Plant Law as inspectors under the Department of Agriculture and pay them from the general revenue under the Department of Agriculture, Section 26, for the

July 28, 1941

reason that the specific appropriation under House Bill No. 581, Section 25 was made for the purpose of only paying said employees and officers under Article 3, chapter 102 known as the Missouri Plant Law.

It is further the opinion of this department that you cannot legally certify an entomologist, associate state entomologist or assistant entomologist under Article 3, chapter 102 known as the Missouri Plant Law to receive payment under the agriculture appropriation which is set out in House Bill No. 581, Section 26.

It is further our opinion that since in all of the sections above set out in the appropriation bill No. 581, it specifically states clerks and stenographers and for that reason the clerks and stenographers can be paid, or transferred, to either the department known as the plant law, veterinary service or general agriculture service and for that reason the clerks and stenographers can be paid out of either appropriation.

Respectfully submitted

W. J. BURKE  
Assistant Attorney General

APPROVED:

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ROY McKITTRICK  
Attorney General

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