

FISCAL YEAR: Change in the fiscal year would require enactment of Constitutional Amendment and cannot be changed by statute.

May 22, 1941

Honorable John T. Hughes
House of Representatives
Jefferson City, Missouri



Dear Sir:

We are in receipt of your request for an opinion, under date of April 28th, 1941, as follows:

"Will you kindly advise me on a very important constitutional question which effects the State of Missouri.

"This question pertains to 'a change in the date of the fiscal year of the State of Missouri.'

"For your information a 'House Joint and Concurrent Resolution' along with a 'House Bill' are now pending and under consideration before the Judiciary Committee of the General Assembly.

"A sub-committee of the Judiciary committee has been appointed, of which I am chairman, to go into the constitutionality of this question.

"If your office will give me a written opinion as to the possibility of this proposed change I would appreciate it immensely."

Your letter enclosed a copy of House Bill No. 30, which is an act to repeal Section 13020 of Article 1,

Chapter 87 of the Revised Statutes of Missouri, 1939, and to enact a new section, changing the fiscal year to a period beginning July 1st and ending June 30 in the next succeeding year.

Your question relates to the constitutionality of the change contemplated by House Bill No. 30 and, we will, therefore, set out the sections of the Missouri Constitution which appear to bear on the question.

Section 43 of Article IV of the Missouri Constitution is in part as follows:

"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. All appropriations of money by the successive General Assemblies shall be made in the following order:

"First, For the payment of all interest upon the bonded debt of the State that may become due during the term for which each General Assembly is elected.

"* * * * *

Section 19, Article X of the Constitution of Missouri is 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 latter section is in harmony with Section 36 of Article IV, which provides that no law passed by the General Assembly, except the general appropriation act, shall take effect until ninety days after adjournment, except those bearing emergency clauses.

Section 12, of Article X of the Constitution of Missouri also provides in part:

"No county, city, town, township, school district or other political corporation or subdivision of the State shall be allowed to become indebted in any manner or for any purpose to an amount exceeding in any year the income and revenue provided for such year, without the consent of two-thirds of the voters thereof voting on such proposition, at an election to be held for that purpose; * * * * *

Taking up the above constitutional provisions in order, Section 43 of Article IV, supra, specifically limits appropriations for the bonded indebtedness of the State to the term for which each General Assembly is elected, that term being a period of two years beginning with January of

the odd numbered years and ending with January in the successive odd numbered years. This provision renders it impossible for any General Assembly to appropriate money for the bonded debt of the State for the first six months of the period for which a succeeding General Assembly is to be elected, and would, therefore prevent a change in the fiscal year to run from July 1st to June 30th in the succeeding year, so far as payment of the State indebtedness is concerned.

Section 19 of Article X, above set out, contains this clause: "nor unless such payment be made, or a warrant shall have issued therefor, within two years after the passage of such appropriation act;". This portion presents unsurmountable difficulties. In many instances the General Assembly adjourns prior to July 1st in legislative years and, in nearly all instances, the general appropriation acts have been passed long prior to July 1st in such years. To comply with the above provision the Legislature would be required to remain in session until July 1st to pass an appropriation which might be approved by the Governor and become effective on July 1st, in order that warrants could be drawn on the funds thereby provided until July 1st two years later. This provision of the Constitution has been construed in *State ex rel. v. Holladay*, 64 Mo. 526, 1. c. 527, 528, in the following language:

"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.

"These provisions of the organic law are self-executive, and consequently need no legislation in their aid. (St. Joe Board Pub. Schools vs. Patton, 62 Mo. 444.)

"Immediately upon their adoption they became operative and effective, not only prospectively, but as to all

existing appropriations. Any other construction than this would only partially abolish the evils and eradicate the mischiefs these constitutional provisions were designed to remedy. Because heretofore, owing to the number and variety of special appropriations hidden in numerous and disconnected session acts, and extending during a long series of years, it was next to impossible, even after exhaustive care and research, to ascertain the precise financial status of the State. This shows very pointedly, as we think, the error of the idea which seeks to limit to future appropriations alone the operation of the constitutional provisions under discussion, the evident purpose of which was to show once every two years, by a general appropriation act and at one connected view, all sums for which the auditor during the next ensuing biennial period could be lawfully called upon to issue his warrant."

It would appear to be impractical for the State and the various counties to employ different fiscal years. Section 12 of Article X, supra, has been interpreted by the Supreme Court to refer to calendar years. We find the following in the decisions of that court in *Union Trust & Savings Bank v. City of Sedalia*, 300 Mo. 399, 1. c. 412:

"The constitutional provision, supra, covers both counties and cities. If the word 'year' as therein used means a calendar year as to counties, why should it mean a different thing as to cities? As to both it refers to and limits the debt-making power during the period of twelve months. The particular twelve months, we say, as to counties, is the twelve months beginning January 1st and ending December 31st. Not only so, but

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we have so said, where the matters at issue were the fiscal transactions of the counties. The fiscal year of the county by our ruling has been established as a calendar year. * * *

A still further obstruction to a change in the fiscal year presents itself. Our State elective officials assume office in January after their election and hold their respective offices for a term of four years and their successors would assume their offices for the last six months of the period for which an appropriation would be made, if the fiscal year were changed. Under these circumstances, it would be possible for an elective official to exhaust the appropriation for his office before his successor assumed the position. While it is to be assumed that no officer would maliciously do this, yet the requirements of his office might be such that he would be legally justified in expending his entire appropriation.

CONCLUSION.

In view of the foregoing authorities and constitutional provisions, it is the conclusion of this office that a proper change in the fiscal year of the State may be brought about only through the adoption of a proper amendment to the Constitution, and that House Bill No. 30, introduced in the 61st General Assembly, is in conflict with the Constitution of Missouri to such extent, as outlined above, that, if passed, it would be ineffective.

Respectfully submitted,

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APPROVED:

VANE C. THURLO
(Acting) Attorney-General

RLH:CP