

APPROPRIATION  
GOVERNOR:  
JUDICIAL COMMISSION:

Governor cannot use funds appropriated  
in H. B. 571 Laws of Mo. 1941, page 125  
D. Operation, for payment of Judicial  
Commission's expenses.

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December 19, 1942

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Honorable Forrest C. Donnell  
Governor of Missouri  
Jefferson City, Missouri

12-22  
FILED

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Dear Governor Donnell:

Your letter of December 10, 1942 is as follows:

"Section 5 of Amendment No 3, which Section  
is found on page 725 of the Laws of Missouri  
1941, reads as follows:

"Section 5. Expenses -- how paid.--  
All expenses incurred in administering  
this amendment, when approved by  
the Supreme Court of Missouri, shall  
be paid out of the state treasury.  
The Supreme Court shall certify such  
expenses to the State Auditor, who  
shall draw his warrants therefor  
payable out of funds not otherwise  
appropriated."

"It is my understanding that no appropriation  
has been made for the present biennium for ad-  
ministering said Amendment No. 3.

"Your opinion, as soon as possible, is respect-  
fully requested on the following question:

"May certain expenses incurred in the present  
biennium in administering said Amendment No. 3  
be paid out of the appropriation found on page  
125 of the Laws of Missouri 1941, which ap-  
propriation reads in part as follows:

"D. Operation:

General expense consisting of communication, printing and binding, engraving, lithographing, travel within and without the State, of the Governor, his secretary, and such other employees as the Governor may deem necessary to make investigations and procure information, to enforce the laws and for any other proper expense, \* \* \* \*?"

In Section 5 of the Constitutional Amendment appearing in Laws of Missouri 1941, page 725, there is a clear statement as to the source from which the expenses of the Judicial Commission shall be paid. That is, "All expenses incurred in the administering of this amendment, when approved by the Supreme Court of Missouri, shall be paid out of the state treasury."

However, the provisions of Section 5, supra, are not so clear as to the method by which payment of these expenses is to be effected. Said section provides:

"\* \* \* The Supreme Court shall certify such expenses to the State Auditor, who shall draw his warrants therefor payable out of funds not otherwise appropriated."

As we see it, to answer your question we do not need to undertake to determine what method is contemplated by this provision. All we need to consider is whether the appropriations made to the Governor in Laws of Missouri 1941, page 125, set out in your letter, may be used for this purpose when Section 5, supra, states that the warrant in payment of such expense shall be drawn by the Auditor (1) on the certification of the Supreme Court (2) on funds in the treasury not otherwise appropriated.

Clearly, if these expenses are to be paid out of the Governor's appropriation, the warrant must of necessity be drawn on the Governor's certification -- not the Supreme Court's and

said warrant must also, of necessity, be drawn on funds in the treasury otherwise appropriated.

In construing laws "words in common use are to be construed in their natural, plain and ordinary significance and acceptance." *Bellerive Inv. Co. v. Kansas City* 13 S. W. (2d) 628, 638 (Mo. Sup.). The natural meaning of the word "otherwise" is: "In a different manner; in another way or in other ways; contrarily." *Webster's New International Dictionary, Second Edition.*

Thus we think the words "not otherwise appropriated" do permit the use of funds appropriated, as set forth in H.B. 571, Section 1, D. Operation (Laws of Mo. 1941, page 125) to be used to pay these expenses. The items for which this appropriation may be spent are enumerated to a certain extent and then follows the classification "and for any other proper expense." In *State ex rel. Cavigan v. Dierkes* 214 Mo. 578, an appropriation act, under consideration, enumerated certain items for which it could be spent and concluded with "and other expenses." In passing on the meaning of this quoted language, the court said, l.c. 592:

"To our mind the rule of eiusdem generis fully applies here. The term 'other expenses' means expenses of the character theretofore mentioned in that clause of the appropriation act \* \* \* \* \*"

We see no difference in substance between the words "and for any other proper expense" used in the appropriation act which we have under consideration, and the language under consideration in the *Dierks* case. Applying said rule, we do not think it can be said that the expenses of the Judicial Commission are of the character for which the appropriation can be spent under the clause "and for any other proper expense." That refers to expenses incurred by the Governor in performance of his duties to be paid on his certification. The Governor has no duties to perform in connection with the functions of the Judicial Commission until that body has completed its deliberations and submits its nominees. It is not the Governor's duty "to enforce" the Constitutional Amendment on selection of judges. This expense is not that incurred for travel by "the Governor, his

secretary, and such other employees as the Governor may deem necessary to make investigations and procure information." It is not expense of "Communication, printing and binding, engraving, (or) lithographing" incurred by the Governor, nor is it an expense similar to any of the above, incurred by the Governor. It therefore appears that these funds are otherwise appropriated and cannot be used due to the restrictive language of Section 5 of the Constitutional Amendment. Even were this not so, the funds authorized by said appropriation, could not be so used because payment of said expense is not one of the objects specified in the appropriation act. Section 19, Article X of the Missouri Constitution prohibits the payment of funds out of the treasury "except in pursuance of an appropriation made by law;" and "it cannot be said that a claim is paid pursuant to an appropriation act, where it is paid out of money specifically appropriated for a different purpose." State ex rel. McKinley Pub. Co. v. Hackmann 282 S. W. 1007, 1013 (Mo. Sup.).

#### CONCLUSION

It, therefore, is our opinion that funds available to the Governor, under H. B. 571 Sec. 1, D. Operation (Laws of Mo. 1941 page 125) cannot be used to pay the expenses incurred by the Judicial Commission in performing its functions under the Constitutional Amendment appearing in Laws of Mo. 1941, page 722.

Respectfully submitted

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APPROVED:

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