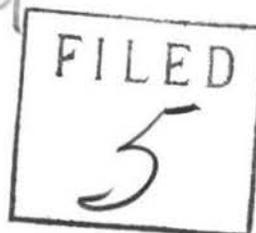


APPROPRIATIONS: Funds may be appropriated in 1943-44 biennium to cover costs of government in 1945, but total period covered may not exceed two years from passage of appropriations act.

February 16, 1943

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Honorable William Barton
State Representative
Montgomery County
Jefferson City, Missouri



Dear Sir:

This will acknowledge receipt of your letter of January 21, 1943, which is as follows:

"May the 62nd General Assembly extend an appropriation into the 1945 biennium provided that such extension does not go beyond the two-year period as set forth in the constitution, of Missouri, Article 10, Section 19, from the final passage and approval of such appropriation for the purpose of paying obligations in part of 1943-44 and the early part of 1945 and within the two-year period for which the appropriation was made?"

"If appropriation can be made in this matter and bills created within the two-year period, particularly the first part of 1945, it would expedite matters. I have been unable to find any authority that would prevent appropriations being made in this matter and would like to know if you have any information that will help me in solving this problem.

"An opinion in the light of this inquiry and in answer to my question will be greatly appreciated."

In answering your question, we first look to the history back of the adoption of Section 19 of Article X of the Constitution of 1875. The Constitution of 1865, Article XI, Section 6 (G.S. 1865) provided:

"No money shall be drawn from the treasury, but in consequences of appropriations made by law; and an accurate account of the receipts and expenditures shall be annually published."

Under this provision the General Assembly, in acts providing for the payment of obligations of the state, made continuing appropriations. That is to say, said body in providing compensation for an officer, would appropriate, in the act providing the compensation, a certain sum as a standing annual appropriation.

The 1875 Constitution contains two provisions concerning appropriations. One is Section 43 of Article IV which prescribes the order in which appropriations shall be made. Said section provides in part:

"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. * * * * *"

This section, by itself, in so far as it relates to appropriations made by law, would not seem to materially alter the 1865 provision. However, the other provision of the 1875 Constitution is Section 19 of Article X and that section provides:

"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."

It will be noticed that the first clause and last sentence of this section are substantially the same as the 1865 provision. But the intervening clauses are entirely new. The intervening clause, that has a bearing upon your question is that providing that no money shall be paid out of the treasury pursuant to an appropriation "unless such payment shall be made, or a warrant shall have issued therefor, within two years after the passage of such appropriation act."

The purpose of this clause and the evils it was intended to abolish are stated in State ex rel. Mo. State Board of Agriculture v. Holladay 64 Mo. 526 (1877) where it is said (l.c. 527):

"* * * 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. * * * * * the evident purpose of * * * (the constitutional provision) was to show once every two years, by a general appropriation act and at one connected view, all sums which the auditor during the next ensuing biennial period could be lawfully called upon to issue his warrant."

The Court further stated (l.c. 528):

"* * * And if any doubt should still linger in the mind on this subject, that doubt will be quickly resolved in favor of the position we have assumed by examination of the debates in the convention which framed the constitution. When speaking of section 19, supra, Mr. Letcher observed: 'In regard to the section,

I desire to say that if I understand the object of it, it is to keep the matter of appropriations close up together. An appropriation made at one time, made we will say today, by law, and no warrant, for instance, issued for that appropriation until two years hence, we find that the State finances would be in such a condition that, unless we put some limit upon this thing, it will be almost impossible to know how the treasury does stand.'

"And commenting on the same section, Mr. Mudd said: 'Now, the object of the committee was to restore to the general revenue the balances of the appropriations not applied at the end of every two years, so that each session of the General Assembly should make appropriations for the term during which they were elected, and not leave these appropriations open to be drawn upon at any time, which have been made by preceding General Assemblies. It was to close up the books at least once every two years, and then if any appropriation be made, let it be made by the General Assembly then in session.'"

Also, the court stated (l.c. 527):

"* * * no appropriation possesses any validity, force, or even existence, after the lapse of two years (from the date of its passage)."

Thus we see that the purpose of the constitutional provision was to provide a maximum period of time which could be covered in an appropriation act so that a balance could be struck at least once every two years. Its purpose certainly was not to prevent the General Assembly from covering the full period allowed, if it so desired. If an appropriation act is invalid and of no force after that time, it must necessarily have been valid and in force up until that period has elapsed.

However, some of the language of the opinion of the court, above quoted, is susceptible to being construed to indicate that the court was of the view that appropriations by force of the constitution, lapsed with the beginning of each legislative biennium. For example, in the first excerpt, the court refers to the "ensuing biennial period." And in the second excerpt the comments of Mr. Mudd are that each General Assembly "should make appropriations for the term for which they were elected." The court's comment in the first excerpt, we think, might well be taken to refer to the ensuing two years following the passage of the appropriation act, rather than as a reference to the biennial period for which a member of the House of Representatives is elected. Particularly, should such language be given this construction when considered in connection with the court's statement that "no appropriation possesses any validity, force or even existence, after the lapse of two years (from the date of its passage)."

It is common knowledge that the General Assembly since 1875 never has passed an appropriation act on the first day of its session and therefore, if any effect is to be given that part of Section 19 of Article X, under discussion, no appropriation would lapse, under the Constitution on the first day of a succeeding session of the General Assembly. As a matter of fact, it would be impossible for a General Assembly to pass an appropriation act on the first day of its session, so that it would lapse due to the two-year constitutional limitation, at the beginning of the session of the succeeding General Assembly. This, because of the provision of the Constitution requiring bills to be read on three different days in each house (Sec. 26 Art. IV Mo. Const).

The Constitution clearly permits money to be paid out of the treasury, under an appropriation, at any time within two years of the passage of the appropriation act. It also clearly permits money to be paid out of the treasury, under an appropriation act, after the lapse of two years from the passage of the appropriation act, if the warrant authorizing such payment was issued prior to the expiration of the two-year period. Therefore, there can be no force to the proposition that each General Assembly has the sole right to make appropriations that cover the two-year term for which members of the House are elected. If an appropriation act can cover a maximum period of two years from the date

of its passage, it would always cover a period of time in a succeeding session of the General Assembly.

The remarks of Mr. Mudd, if followed literally, would bring about an impossible situation. Mr. Mudd seemed to be of the opinion that the Constitution required appropriation to lapse at the beginning of each session of the General Assembly. (That seems to us the only conclusion that may be drawn from his statement that each General Assembly should make the appropriations for the term for which they were elected.) Yet the Constitution says that appropriations may be made covering a period of two years from the date of passage of the appropriation act, which period, we have shown will always extend into the period for which members of the House, of a succeeding General Assembly, are elected. Thus, Mr. Mudd's views are directly in conflict with the language of the Constitution, and if followed, require the General Assembly to cover a less period of time in an appropriation act than the maximum period that the Constitution permits. It is further to be noticed, that the court in the Holladay case, stressed by italics, only that part of the remarks of Mr. Letcher and Mr. Mudd, having to do with keeping the appropriations close together and closing the books at least once in every two years. No stress is laid on Mr. Mudd's remarks as to a General Assembly making the appropriations covering the term for which they were elected.

It has been said that remarks made in such Conventions "are not the most trustworthy aids, since these in no wise necessarily represent the views of the majority of the conventions and less certainly reflect those of the people whose votes adopted the constitution but who did not hear the debates." State ex rel. Hiemberger v. Board of Curators 268 Mo. 598, 616.

You have previously been furnished with a copy of our opinion under date of April 22, 1938 to Sam L. Trimble. In that opinion reliance was placed on the excerpts, above quoted, from the Holladay case as to what Mr. Mudd said in the convention, to support the statement "that each Legislature controls what money is to be spent during the biennium for which it is elected." The question there presented did not require this determination and we have above demonstrated how such cannot be correct if any meaning is to be given to the provision of the constitution making appropriations valid for the full two years from the date of passage. The appropriation under consideration in the Trimble

opinion by its own terms limited the use of the funds appropriated to "the 1937 and 1938" biennium. It was that factor which impelled the conclusion there reached. That appropriation, like all others in the past, only covered the period from the date of its passage to the commencement of the next regular session of the General Assembly - a period of something less than two years.

CONCLUSION

We therefore are of the opinion that the 62nd General Assembly may adopt an appropriation act which would authorize payment of money out of the treasury during the year 1945. Of course, such an act must not, by its own terms, limit the authorization to the 1943-44 biennium, and would only be valid two years from the date of its passage. For example, such an act, if passed on May 1, 1943, would be valid and in full force until the close of the day of April 31, 1945, and even after that date, money could be paid out under such appropriation act, if the warrant therefor was issued prior to the close of the day of April 31, 1945. However, in this connection, consideration would have to be given to some change in Section 13051 R. S. No. 1939, and any other similar provisions if they exist.

Respectfully submitted

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APPROVED:

ROY McKITTRICK
Attorney General

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