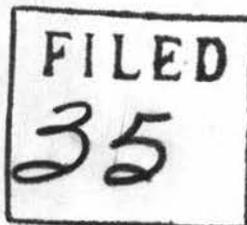


ADJUTANT GENERAL) Since third class city has no authority to levy
APPROPRIATIONS) assessment against state-owned armory for paving
MUNICIPALITIES) a street, Adjutant General cannot pay or contri-
bute a proportionate part of the cost of same.

October 23, 1950

10/26/50



Mr. R. L. Groves
Fiscal Officer
Adjutant General's Office
Jefferson City, Missouri

Dear Sir:

This is in reply to your recent request for an official opinion of this department which reads in part as follows:

"Reference is made to your opinion rendered to this office dated 24 August 1950, relative to tax assessment for paving of street adjoining armory at Kennett, in reply to our letter dated 4 August 1950.

* * * * *

"The question that is not decided is whether you (the Adjutant General), from your (his) appropriation for repairs and replacements under Secs. 4.026 and 9.570a of the appropriation acts of the 65th General Assembly, can pave one-half of the street abutting a state armory or contribute a proportionate part to the paving of a street which serves as an ingress and egress to a state armory."

This department has held in an official opinion addressed to you under date of August 24, 1950, that the assessment bill presented to the Adjutant General's Office for the paving of a street adjoining the state-owned armory in the City of Kennett, Missouri, was invalid, as cities of the third class have not been given the authority to levy assessment bills for the paving of streets against lots or tracts of land owned by the state. The question now presented is whether or not the Adjutant General, from his general appropriations for repairs or replacements, can voluntarily contribute or pay a proportionate part of the cost of said paving.

It is fundamental that appropriations may be expended only as authorized by law. No constitutional or statutory

Mr. R. L. Groves

provision can be found which authorizes the Adjutant General to contribute a proportionate part of the cost of paving a street adjoining a state-owned armory, and such payment would constitute a contribution as cities of the third class are without authority to assess state-owned property for paving a street adjoining same.

The general appropriations for repairs and replacements can be utilized only for the payment of authorized repairs and replacements, and such appropriations cannot be considered authority to expend same for an invalid assessment. There is no authority elsewhere authorizing such expenditure, and the appropriation statutes themselves cannot furnish such authority. An attempt to furnish such authority therein would be an attempt to include general legislation in an appropriation bill, which would be unconstitutional and void. It was so held in the case of State ex rel. v. Canada, 113 S.W. (2d) 783, 342 Mo. 121, at l.c. 790:

" * * * Legislation of a general character cannot be included in an appropriation bill. To do so would violate section 28 of article 4 of the Constitution, which provides that no bill shall contain more than one subject which shall be clearly expressed in its title. There is no question but what the mere appropriation of money and the amendment of section 9622, a general statute granting certain authority to the board of curators, are two different and separate subjects. State ex rel. Davis v. Smith, 335 Mo. 1069, 75 S.W. 2d 828; State ex rel. Hueller v. Thompson, 316 Mo. 272, 289 S.W. 338. * * * "

One might consider that, as a matter of fairness, this bill should be paid. However, this is a matter for the Legislature, as the court has pointed out in the case of City of Clinton v. Henry County, 115 Mo. 557, 22 S.W. 494, at l.c. 571:

" * * * The property here in question is strictly public property, and on well settled principles of law cannot be held liable for these local improvement assessments until the legislature so says in clear terms or by necessary implication, and that it has not done by the statute relating to cities of the third class.

Mr. R. L. Groves

"There is much merit in the argument that the public, the beneficial owner of the courthouse property, ought, as a matter of fairness, to bear a part of the cost of improving the streets, but the argument addresses itself to the legislature. Courts must declare the law as they find it."

CONCLUSION

It is, therefore, the opinion of this department that since cities of the third class are without authority to levy assessment bills for the paving of streets against lots or tracts of land owned by the state, the Adjutant General may not, from his general appropriations for repairs and replacements, pay or contribute a proportionate share of the cost of paving a street adjoining a state-owned armory within such a city.

Respectfully submitted,

RICHARD H. VOSS
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

RHV:VLM