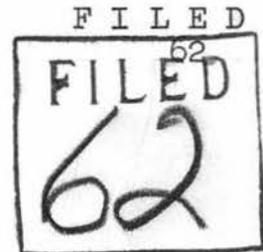


SOIL DISTRICTS COMMISSION: Motor vehicles belonging to the Missouri State Soil Districts Commission must be sold by the state purchasing agent; Money received from the sale of said vehicles must be deposited in the State Treasury, and the Commission cannot spend such funds.

September 21, 1950

Missouri State Soil Districts Commission
Columbia, Missouri

Dear Mr. Longwell:



I.

We have received your request for an opinion upon the following propositions:

"The Commission now owns three automobiles--two are passenger cars and one is a pickup truck. The truck and one of the passenger cars are no longer considered necessary by the Commission. The Commission would like to know whether

"(1) It has authority to sell the truck or the passenger car, or both, for cash.

"(2) The money obtained from the sale of the truck or passenger car, or both, could be retained for expenditure by the Commission.

"(3) If the Commission can retain and spend this money, could it properly be used to supplement money appropriated for use by the Commission to pay the salary of an executive secretary."

II.

The Missouri Constitution of 1945 provides as follows:

"Article IV

"EXECUTIVE DEPARTMENT

"Section 15. The state treasurer shall be custodian of all state funds. All revenue collected and moneys received by the state from any source whatsoever shall go promptly

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into the state treasury, and all interest, income and returns therefrom shall belong to the state. Immediately on receipt thereof the state treasurer shall deposit all moneys in the state treasury to the credit of the state in banking institutions selected by him and approved by the governor and state auditor, and he shall hold them for the benefit of the respective funds to which they belong and disburse them as provided by law. Such institutions shall give security satisfactory to the governor, state auditor and state treasurer for the safekeeping and payment of the deposits on demand of the state treasurer authorized by warrants of the state auditor. No duty shall be imposed on the state treasurer by law which is not related to the receipt, custody and disbursement of state funds."

"Section 23. The fiscal year of the state and all its agencies shall be the twelve months beginning on the first day of July in each year. The general assembly shall make appropriations for one or two fiscal years, and the 63rd General Assembly shall also make appropriations for the six months ending June 30, 1945. Every appropriation law shall distinctly specify the amount and purpose of the appropriation without reference to any other law to fix the amount or purpose.

"Section 28. No money shall be withdrawn from the state treasury except by warrant drawn in accordance with an appropriation made by law, nor shall any obligation for the payment of money be incurred unless the comptroller certifies it for payment and the state auditor certifies that the expenditure is within the purpose of the appropriation and that there is in the appropriation an unencumbered balance sufficient to pay it. At the time of issuance each such certification shall be entered on the general accounting books as an encumbrance on the appropriation. No appropriation shall confer authority to incur an obligation after the termination of the fiscal period to which it relates, and

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every appropriation shall expire six months after the end of the period for which made."

"Article III

"Section 36. All revenue collected and money received by the state shall go into the treasury and the general assembly shall have no power to divert the same or to permit the withdrawal of money from the treasury, except in pursuance of appropriations made by law. All appropriations of money by successive general assemblies shall be made in the following order:

"First: For payment of sinking fund and interest on outstanding obligations of the state.

"Second: for the purpose of public education.

"Third: For the payment of the cost of assessing and collecting the revenue.

"Fourth: For the payment of the civil lists.

"Fifth: For the support of eleemosynary and other State institutions.

"Sixth: For public health and public welfare.

"Seventh: For all other state purposes.

"Eighth: For the expense of the general assembly."

The Constitution of Missouri of 1875 had a section (Sec. 19,) Art. X) that provided that no money 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, etc., the provisions of this section have been implanted in Sections 23 and 28 of Article IV of the Constitution of 1945. The Supreme Court of Missouri in the case of *Nacy v. LePage*, 111 S.W. (2d) 25, 1.c. 26, in construing said constitutional provisions 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

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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.* * *"

The Laws of Missouri, page 1449 provide for a Division of Procurement headed by a state purchasing agent, and Section 69 of said laws at page 1452 provides as follows:

"The purchasing agent shall have the power to transfer supplies from any department where they are not needed to any other department where they are needed and to direct that proper charges and credits be made on the inventories of the departments concerned. He shall also have power, subject to the same provisions as for bids for purchases, to sell any surplus or unneeded supplies or property in his hands or owned by the state or any department thereof. He shall keep currently an inventory of all removable equipment owned by the state."

The Laws of Missouri, 1945, at page 1982, Section 17, provides as follows:

"All fees, funds and moneys from whatsoever source received by any department, board, bureau, commission, institution, official or agency of the state government by virtue of any law or rule or regulation made in accordance with any law, shall, by the official authorized to receive same, and at stated intervals be placed in the state treasury to the credit of the particular purpose or fund for which collected, and shall be subject to appropriation by the General Assembly for the particular purpose or fund for which collected during the biennium in which collected and appropriated. The unexpended balance remaining in all such funds (except such unexpended balance as may remain in any fund authorized, collected and

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expended by virtue of the provisions of the constitution of this state), shall at the end of the biennium and after all warrants on same have been discharged and the appropriation thereof has lapsed, be transferred and placed to the credit of the ordinary revenue fund of the state by the state treasurer. Any official or other person who shall wilfully fail to comply with any of the provisions of this section, and any person who shall willfully violate any provision hereof, shall be deemed guilty of a misdemeanor: Provided, that in the case of state educational institutions there is excepted herefrom, gifts or trust funds from whatever source: Appropriations, gifts or grants from the Federal Government, private organizations and individuals; funds for or from student activities, farm or housing activities, and other funds from which the whole or some part thereof may be liable to be repaid to the person contributing the same, and hospital fees; all of which excepted funds shall be reported in detail quarterly to the Governor and biennially to the General Assembly."

The appropriation for the State Soil Districts Commission for the period beginning July 1, 1949, and ending June 30, 1951, appears in the laws of Missouri, 1949, at page 144 and provides as follows:

"Personal Service:

"Salaries and per diem of officers, secretary
and other necessary employees - - - - \$5,000.00

"Additions:

"For the original purchase of furniture and office
equipment including material and supplies \$1,370.00

"Repairs and Replacements:

"For repair and replacement of furniture and office
equipment \$ 800.00

"Operation:

"General expense: consisting of communication,

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printing and binding, transportation, travel
within and without the state, insurance and
premiums on bonds, stationery and office
supplies and other general expenses - - - \$11,830.00

"Total out of General Revenue Fund - - - 19,000.00

It is a well settled rule that "an appropriation law is to be construed under and by the same rules as other legislation." 59 C.J. 262. Also see State ex rel. McKinley Publishing Company vs. Hackman, 282 S.W. 1007, 314 Mo. 33.

The Legislature has specifically provided the sum of \$5,000.00 for personal services for the biennial period beginning July 1, 1949, and ending June 30, 1951.

We have checked the appropriation acts of the Legislature since the creation of the Missouri State Soil Districts Commission. We have been unable to find in any of such acts the creation of a revolving fund for the use of the Commission.

Conclusion

In view of the above statutory and constitutional provisions, it is the opinion of this department that the Missouri State Soil Districts Commission:

- (1) Does not have authority to sell its motor vehicles but must have the state purchasing agent sell them for and on behalf of said Commission;
- (2) That the Commission cannot retain the money received from the sale of such vehicles, as the money must be deposited in the state treasury;
- (3) That the Commission cannot spend in excess of the amount appropriated by the 65th General Assembly for personal services (\$5,000.00) for the biennial period ending June 30, 1951.

Respectfully submitted,

STEPHEN J. MILLETT
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General