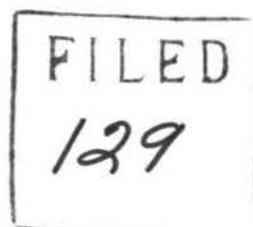


April 4, 1974

OPINION LETTER NO. 129
Answer by letter-Boicourt

Honorable Harry Rupert Stafford, Jr.
Prosecuting Attorney
Douglas County
Box 4
Ava, Missouri 65608



Dear Mr. Stafford:

You have requested an opinion by the Office of the Attorney General for the state of Missouri pertaining to the following legal matters:

"1. Is revenue-sharing money 'public money' within the meaning of Section 25, Article VI, Missouri Constitution.

"2. Is not-for-profit corporation of senior citizens a private association or corporation within the meaning of Section 25, Article VI, Missouri Constitution.

"3. Does Section 38(a), Article III, Missouri Constitution allow revenue-sharing money to be distributed by the county court to a not-for-profit corporation of senior citizens."

You have made clear that your opinion request was submitted in your official capacity as prosecuting attorney of Douglas County, Missouri, to assist you in advising the county court of Douglas County, Missouri, whether they have legal authority to pay a share of the rental for the headquarters of the Douglas County Senior Citizens Association, Inc., a nonprofit corporation, leasing a building in Ava, Missouri.

Honorable Harry Rupert Stafford, Jr.

We first turn to the second question posed by your request. We have concluded that Article VI, Section 25, Constitution of Missouri (1945) prohibits a county from granting "public money or property," in the form of partial rent payments, to a not-for-profit corporation of senior citizens which clearly falls within the category of "any private individual, association or corporation." None of the exceptions to the general prohibition against the granting of public moneys to private institutions would apply to the not-for-profit corporation postulated by your opinion request. The constitutional provision in question makes absolutely no distinction between profit making business enterprises and nonprofit private corporations or associations formed for benevolent purposes.

Although not discussed in your opinion request, Article VI, Section 23, Constitution of Missouri (1945) also specifically prohibits the use of public funds to aid private corporations. We quote:

"No county, city or other political corporation or subdivision of the state shall own or subscribe for stock in any corporation or association, or lend its credit or grant public money or thing of value to or in aid of any corporation, association or individual, except as provided in this Constitution."
(Emphasis added).

Sections 23 and 25 of Article VI of the 1945 Missouri Constitution prohibit the granting of public moneys by the county court of Douglas County to the private not-for-profit corporation referred to in your request. See Ruggeri v. City of St. Louis, 429 S.W.2d 765, 769 (Mo. 1968); Attorney General's Opinion No. 75, Riley, February 29, 1952 (copy enclosed); and Attorney General's Opinion No. 69, Marshall, February 11, 1974 (copy enclosed).

Inquiries one and three submitted in your opinion request ask, in effect, whether the constitutional prohibition against municipalities granting money to private corporations applies to a grant of money accruing to a municipality via the federal revenue sharing program. We must answer that question in the affirmative. Section 123(a)(4) of Public Law 92-512, the State and Local Fiscal Assistance Act of 1972, requires a local unit of government, as a condition to the receipt of revenue sharing funds, to assure the United States Secretary of the Treasury that "it will provide for the expenditure of amounts received under subtitle A only in

Honorable Harry Rupert Stafford, Jr.

accordance with the laws and procedures applicable to the expenditure of its own revenues;". As stated hereinabove, the Constitution of this state prohibits a municipality from spending its own public revenues via grant to a private corporation.

Yours very truly,

JOHN C. DANFORTH
Attorney General

Enclosures: Op. No. 75
2-29-52, Riley

Op. No. 69
2-11-74, Marshall