

APPROPRIATIONS:

The Governor has the authority to establish the level of salary of the director of the Department of Transportation and such funds appropriated to the department, for personal service, may be utilized to supplement the amount appropriated for the salary of the director.

OPINION NO. 217

May 10, 1974

FILED
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Honorable Christopher S. Bond
Governor of Missouri
Executive Office
State Capitol Building
Jefferson City, Missouri 65101

Dear Governor Bond:

This is in reply to your request for an opinion concerning the validity of an appropriation, in C.C.S.H.B. No. 1004, 77th General Assembly, for the salary of the director of the Department of Transportation.

Section 4.540 of C.C.S.H.B. No. 1004 states, in part:

"To the Department of Transportation
For the Administration and Aviation
Section
Salary of the Director. \$17,500
Personal Service (FTE 7). 81,582"

Section 14.1 of the "Omnibus Reorganization Bill of 1974" (C.C.S.H.C.S.S.C.S.S.B. No. 1, First Extraordinary Session, 77th General Assembly, hereinafter referred to as Senate Bill No. 1) states, in part:

"There is hereby created a department of transportation . . . The governor shall appoint a director of the department by and with the advice and consent of the senate, to be the chief administrative officer of the department and shall fix the level of his salary."

Section 1.6(7) of Senate Bill No. 1 states:

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"The director of each department, other than those directors appointed by the heads of departments authorized to set salaries of directors, shall receive an annual salary of thirty thousand dollars payable in twelve equal monthly installments."

Generally, the courts of Missouri and this office, in numerous official opinions, have consistently held that any portion of an appropriation bill which, in effect, would constitute general legislation, is in violation of Article III, Section 23 of the Missouri Constitution. See State ex rel. Davis v. Smith, 75 S.W.2d 828 (Mo. Banc 1934); State ex rel. Gaines v. Canada, 113 S.W.2d 783 (Mo. Banc 1937), reversed on other grounds, 305 U.S. 337; and particularly State ex rel. Hueller v. Thompson, 289 S.W. 338 (Mo. Banc 1926).

Therefore, if the General Assembly has, by previous general legislation, granted a power to another or established a particular provision, it may not affect that previous grant or provision by the terms of an appropriation bill. Additionally, valid and invalid portions of an appropriation bill are severable. See Attorney General's Opinion No. 10, dated June 11, 1953, to I. T. Bode.

Initially, there appears to be a possible conflict between the provisions of Section 1.6(7) and Section 14.1 of Senate Bill No. 1. It is our view, considering the traditional rules of statutory interpretation, that a specific expression of the General Assembly will be interpreted as an exception to a more general expression, to the extent they conflict. Thus, we believe the General Assembly intended to grant the authority to the Governor to set the director's salary by the provisions of Section 14.1 of Senate Bill No. 1.

Therefore, the General Assembly cannot affect the previous grants, to the Governor, by attempting to set the salary level of the director in an appropriation bill.

Consequently, it is our view that, if the Governor establishes a salary level in excess of \$17,500, the additional funds (\$81,582) appropriated for personal service to the department may be utilized to pay the difference.

On the other hand, if the Governor establishes a salary level below \$17,500, it is our view that the amount appropriated in excess of the set level must lapse.

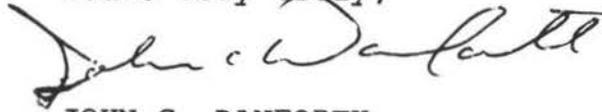
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CONCLUSION

Therefore, it is our opinion that the Governor has the authority to establish the level of salary of the director of the Department of Transportation and such funds appropriated to the department, for personal service, may be utilized to supplement the amount appropriated for the salary of the director.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Walter W. Nowotny, Jr.

Yours very truly,

A handwritten signature in cursive script, appearing to read "John C. Danforth".

JOHN C. DANFORTH
Attorney General