

APPROPRIATIONS: State funds granted in aid of cities, t  
DEPT. OF RESOURCES and counties under Laws of Mo. 1945, p. 1315,  
AND DEVELOPMENT: do not become fixed obligation of the state  
until final release by the Governor.

October 31, 1949

10/31/49

Mr. H. H. Mobley  
Director, Division of  
Resources and Development  
Jefferson City, Missouri



Dear Mr. Mobley:

We have your recent letter in which you request an opinion from this office. Your letter is as follows:

"Laws of Missouri, 1945, page 1315, provides that the State of Missouri may grant a sum not to exceed ten thousand dollars to a city, town or county to aid in the purchase and construction of air fields in such county or near such city and town. The statute provides that, upon the certification of any city, town or county that it is ready to proceed with the purchase or construction of said air field, the money may be allotted to said city, town or county, and that when the Department of Resources and Development has certified to the Governor that in its judgment the air field in question is desirable and that the funds proposed are adequate to complete the project, that said money so allotted shall be released.

"The question is: Is the obligation incurred within the meaning of Section 28 of Article IV of the Constitution of Missouri, 1945, when the funds are allotted or when the funds are released?"

The Constitution of 1945 provides in Section 28 of Article IV:

"No money shall be withdrawn from the state treasury except by warrant drawn in accordance with an appropriation made by law, nor shall any obligation for the payment of money be incurred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 every appropriation shall expire six months after the end of the period for which made."

Section 23, Article IV, Constitution of Missouri, provides, in part, as follows:

"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. \* \* \* 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 1, page 1315, Laws of Missouri, 1945, provides, in part, as follows:

" \* \* \* Provided further that when any city, town or county in Missouri shall certify to the Governor that it has appropriated a specific sum for the aforesaid purpose and is ready to proceed with the purchase or construction of such air fields a like sum not exceeding ten thousand dollars (\$10,000.00) shall be allotted

to said city, town or county from the appropriation hereinafter made for such purpose, but said sum shall be released to such city, town or county only after the Department of Resources and Development has certified to the Governor that in their judgment the air field in question is desirable and in the interest of the development of aviation and that the funds proposed are adequate to complete the project; \* \* \*"

The question is: When does the offer to contribute ten thousand dollars become a fixed obligation or debt of the State of Missouri, that is, does it become a debt when the first application by the city, town or county is made to the Governor, or is the debt incurred when the Department of Resources and Development has made its certification to the Governor?

The Constitution provides, supra, that no obligation shall be incurred after the termination of the fiscal period and every appropriation shall expire six months after the end of the period for which made. Thus, when the allotments for the air fields become "incurred obligations" is the vital proposition here. In passing upon a similar constitutional provision, the Supreme Court of Arkansas said in the case of *Jobe v. Caldwell and Drake*, 136 S.W. 967:

"In fixing the amount of an appropriation, the legislature anticipates and makes an estimate of the amount of money to become due and payable by the state during the specified fiscal period, and sets that much aside for such use during that period. Payments out of the appropriation of amounts falling due after the expiration of that fiscal period are not anticipated and included in the estimates, and cannot therefore be paid, even if the unexhausted appropriation be sufficient for that purpose. If it be conceded that counsel are correct in their contention that an appropriation continues to be available, after the expiration of the fiscal period, for the payment of obligations incurred during that period, an obligation must mature and become payable during that period, before payment can be demanded out of the appropriation. It is not sufficient that an

obligation may arise out of dealings with the state, to mature during a later fiscal period. The debt must, as already stated, mature and become payable during the fiscal period, before it can be held to come within the appropriations made for that period. In other words, a mere promise on the part of the state, within the lifetime of an appropriation, does not fall within the appropriation, unless such promise matures within that period. It is not correct to say that an amount earned under contract with the state comes within an appropriation, when the contract provides for payment after expiration of that fiscal period. \* \* \*

Further on this point: "Expenses are not 'incurred' during taxable year unless legal obligation to pay them has arisen." *Bauer Bros. v. Commissioner*, 46 Fed. (2d) 875. "Expenses are not 'incurred' until legal obligation to pay them arises and do not accrue within taxable year unless all events determining liability occur within such year." *Desco Corp. v. United States*, 55 Fed. (2d) 411, 413.

Clearly, then, no debt has been incurred, nor any obligation to pay becomes fixed at that stage, or at that point, where no more has been done than the certification by a city, town or county to the Governor that said city, town or county had appropriated a specific fund for airport purposes, followed by an allotment of a specific fund from the appropriation provided by Laws of Missouri, 1945, page 1315. This is made explicit in Section 1, page 1315, supra, which states that "said sum shall be released to such city, town or county only after the Department of Resources and Development has certified to the Governor that in their judgment the air field in question is desirable."

Therefore, the state's obligation to contribute does not become a fixed debt to any city, town or county until the final certification to the Governor by the Resources Board. Thus, if this final certification for the release of the money is made after the period provided in Section 28 of Article IV, supra, the obligation is incurred too late to be paid for with money appropriated during that fiscal period. For example, if funds are appropriated for one fiscal term for the aid of certain counties, cities or towns, but the final certification to

the Governor by the Resources Board comes after that fiscal period has terminated, according to the duration of the fiscal terms set out in Section 28, said fund could not be turned over to the counties, etc., because of the language of Section 28, as follows: "No appropriation shall confer authority to incur an obligation after the termination of the fiscal period to which it relates."

Funds are set aside by the Legislature for certain contemplated air fields, but if the final certification is not made within the period provided by Section 28, said funds cannot be paid over as no debt or obligation to pay arose until after the appropriation period for which the funds were voted had expired. Thus, the funds so set aside are both unexpended and unexpendable. Said dormant funds should be paid back into the general revenue fund and a new appropriation of like amount should be made for the next fiscal term so that the cities, counties and towns for which said funds were originally set aside may now have them, as contemplated by Section 1, Laws of Missouri, 1945, supra.

#### CONCLUSION

It is the opinion of this office that a sum granted by the State of Missouri to a city, town or county for an air field under the provisions of Laws of Missouri, 1945, page 1315, does not become an obligation of the state within the meaning of Section 28, Article IV of the Constitution of Missouri, 1945, until such sum has been released by the Governor in the manner prescribed by Laws of Missouri, 1945, page 1315.

Respectfully submitted,

H. JACKSON DANIEL  
Assistant Attorney General

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APPROVED:

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J. E. TAYLOR  
Attorney General