

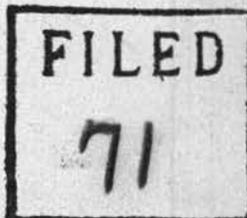
COMPTROLLER:
APPROPRIATIONS:

Comptroller should pay claims under appropriation for relief of county clerks although original claim accrued more than two years prior to presentation.

January 4, 1950

1/12/50

Honorable E. L. Pigg
State Comptroller
Jefferson City, Missouri



Dear Sir:

We have received your request for an opinion of this department, which request is as follows:

"Sections 10.210, 10.280 and 10.720 of House Bill 433 appropriate money for the payment of claims of certain county clerks for making and extending tax books, as provided in Section 11238, R. S. Mo. 1939.

"These accounts were not presented for payment within two years from the time they accrued. (Section 13038, R. S. Mo. 1939, also Laws 1945, page 1442, Section 40.) If these accounts had been presented at the proper time they would have been paid. Since they were more than two years old when presented, payment was refused.

"My question: Since the General Assembly has made an appropriation for payment of these claims in H. B. 433, can they now be legally approved for payment? I would like to have your opinion on this question."

Section 11238, R. S. Mo. 1939, which was amended by Laws of Missouri, 1945, pages 1823 and 1956, provides for the payment by the state to the county clerk of certain fees for his services in preparing and extending the tax books. That section was further amended by House Bill No. 126 of the 65th General Assembly, but the amendment is immaterial in the present situation.

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The following provision is found in Laws of Missouri, 1945, page 1442, Section 40:

"Persons having claims against the state shall exhibit the same, with the evidence in support thereof, to the comptroller, for his approval, within two years after such claims shall accrue, and not thereafter."

A similar provision was found in Section 13038, R. S. Mo. 1939 (now repealed), applicable to the State Auditor.

Section 10.210 of House Bill No. 433, 65th General Assembly, provides as follows:

"There is hereby appropriated out of the State Treasury, chargeable to the General Revenue Fund, the sum of Seven Hundred Forty-six Dollars Thirty-one Cents (\$746.31), for the relief of T. E. Bell, Clerk of the County Court of Iron County, Missouri, for preparing and extending the state's portion of the tax books in the County of Iron for the years 1942, 1943, 1944, 1945 and 1946."

Section 10.280 of said bill makes similar provision for the County Clerk of Reynolds County for the years 1942, 1943, 1944, 1945 and 1946. Section 10.720 does likewise for the County Clerk of Dent County for the years 1945 and 1946.

There have been few cases which have considered the effect of the statute limiting the time within which claims against the state must be presented for payment. In the case of State ex rel. Johnson v. Draper, 48 Mo. 56, l.c. 58 (decided in 1871), the court, in discussing the provision then in effect, which was the same at that time as that found in Section 13081, R. S. Mo. 1939, stated:

" * * * It is clear that the Legislature intended to limit the power of the auditor to recent and fresh claims, reserving to itself the power, if any strong equity should be shown in favor of an older one, to pass upon it by a special act."
(Emphasis ours.)

A recent discussion of the power of the Legislature in regard to claims against the state is found in the case of

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State ex rel. S. S. Kresge Co. v. Howard, 357 Mo. 302, 208 S.W. (2d) 247. That case involved an appropriation (Laws of Missouri, 1947, Vol. I, pages 175, 179, Section 9.061) for the relief of S. S. Kresge Company for payment of foreign corporation qualification tax which the corporation had paid prior to a decision of the Supreme Court holding that there was no liability to pay the additional tax. In the course of its opinion the court stated, 208 S.W. 1.c. 250:

" * * * The State itself, without intervention of judicial process which was not necessary under the circumstances, has seen fit to acknowledge its lawful obligation to relator by making the appropriation. And certainly the State may appropriate money for the payment of its lawful obligation unless, because of particular circumstances, there is some constitutional bar.

"Respondent contends the appropriation offends several constitutional provisions. Section 38 of Article III, Constitution 1945, Mo. R.S.A. denies the general assembly the power to grant public money or lend public credit to any private person or corporation. This prohibition does not apply to the appropriation to relator because it was in payment of a valid public obligation, and was not a grant or gift of public money. As was said in Re Monfort's Estate, 193 Minn. 594, 259 N.W. 554, 555, 98 A.L.R. 280, under a similar constitutional provision: 'There is nothing in the Constitution forbidding the state to recognize and pay its just debts.' State ex rel. Prairie v. Walker, 85 Mo. 41, is not apposite under the facts.

"Subsection (30) of Section 40, Article III forbids the passing of a special law where a general law can be made applicable. A general law would not be applicable here. An appropriation to pay a particular obligation to a particular obligee is not a proper subject for a general law. Such an appropriation is not comprehended as a special law under this section. But it is suggested there may be others who suffered the same

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illegal exaction of the domestication tax. The record before us does not disclose this fact. Even if there are, such fact does not affect the validity of the appropriation for the payment of relator's lawful claim. It may be assumed that the State will pay all its lawful obligations.

"Subsection (7) of Section 40, Article III, forbids the general assembly by local or special law from 'remitting fines, penalties and forfeitures or refunding money legally paid into the treasury.' The refund here is not by 'special' law. Furthermore this provision does not forbid refunding money paid into the treasury through illegal exaction as was done in this case.

"Section 28 of Article IV provides that no obligation for the payment of money shall be incurred unless the comptroller certifies it for payment. Section 22 of the same article makes the comptroller the director of the budget, and provides he shall preapprove all claims and accounts. Clearly these provisions are not intended as conditions precedent limiting the power and authority of the general assembly to make an appropriation. To the contrary, an appropriation by the general assembly appears to be a prerequisite for the duties to be exercised by the comptroller under these sections. Since a valid appropriation has been made it is the duty of the comptroller to act.*** (Emphasis ours.)

That opinion, we feel, establishes the power of the General Assembly to recognize and pay a liability of the state in the absence of constitutional prohibition. It further rules aside any constitutional objections which might be made to the appropriations under consideration.

Insofar as the two-year statute is concerned, we feel that it would undoubtedly be considered by the court to be a limitation upon the Comptroller's power and not upon that of the Legislature. Recognition by the Legislature of a claim after the expiration of the two-year period would, in effect, amount to the reinstatement of the obligation just as the acknowledgment of an indebtedness after the expiration of the period of

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limitations avoids the operation of the statute of limitation.
54 C. J. S., Limitation of Actions, Section 304, page 370.

CONCLUSION

Therefore, this department is of the opinion that the Comptroller should pay claims made under appropriations for relief of county clerks for services in preparing and extending the tax books although the original claims for such services accrued more than two years previously, the appropriation by the Legislature having the effect of providing for the payment of such obligations despite the expiration of the original period within which the claims should have been presented to the Comptroller.

Respectfully submitted,

ROBERT R. WELBORN
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

RRW:ml