

GENERAL ASSEMBLY: Contingent expenses of the General Assembly
APPROPRIATION: incurred prior to July 1, 1953 can be paid out
COMPTROLLER: of contingent fund General Assembly appropriation
1951-53 and out of Section 8.020, House Bill
397 passed by the 67th General Assembly.



November 16, 1953

Mr. Newton Atterbury
State Comptroller and
Director of the Budget
Jefferson City, Missouri

Dear Mr. Atterbury:

This will acknowledge the receipt of your request for an opinion, the pertinent part of which reads:

"We wish to request an opinion in regard to paying accounts incurred during the last six months of the 1951-53 biennium by the House of the Missouri Legislature.

We believe you are familiar to some extent with this matter. In brief, the House has accumulated items which should be paid amounting to \$17,783.21. They have a balance in their 1951-53 contingent account appropriation of \$8,354.61. They have a balance in their 1953-55 appropriation, allotted and unexpended, in the amount of \$44,536.23. All the above items have been certified to the Comptroller for payment between the dates of February 27, 1953 and May 30, 1953, with exception of the item of \$5,471.86 to cover the House's fifty per cent pay of the Inaugural expenses.

Would it be possible to pay the accounts above mentioned out of the 1951-53 appropriation as far as possible and then pay the balance of the accounts out of the 1953-55 appropriation?"

A well established rule of Statutory construction is that appropriation acts must be construed strictly: *St. v. Weatherby*, 168 S.W. (2d) 1048, 350 Mo. 741. In *St. ex rel. Bradshaw v. Hackman*, the court held that no State office can pay out the money of the State, except pursuant to Statutory

authority authorizing and warranting such payment. Another well established rule of Statutory construction is to ascertain the law makers intention from words used and all rules of interpretation are to be treated as subordinate to that requireing determination of Legislative intent, State v. Ball 171 S.W. (2d) 787.

Section 8.010 and 8.020 of House Bill 397 passed by the 67th General Assembly reads:

"There is hereby appropriated out of the state treasury, chargeable to the General Revenue Fund, the sum of Five Hundred Seventy-three Thousand Dollars (\$573,000.00), to pay the salaries of the members of the 67th and 68th General Assemblies for the period beginning July 1, 1953 and ending June 30, 1955.

--There is hereby appropriated out of the state treasury, chargeable to the General Revenue Fund the sum of Five Hundred Seventy Thousand Dollars (\$570,000.00) or so much thereof as may be necessary to pay the contingent expenses and to pay the salaries of elective and appointive officers and other employees of the General Assembly for the period beginning July 1, 1953 and ending June 30, 1955, as follows:

Contingent expenses of the Senate.....	\$210,000.00
Contingent expenses of the House.....	\$360,000.00
Total from General Revenue Fund.....	<u>\$570,000.00"</u>

You inquire if certain contingent expenses of the House of Representatives incurred in the early part of 1953 and duly certified for payment to the comptroller prior to May 30, 1953 may be paid out of the contingent fund of the appropriation 1951-53 so far as said fund will permit and the balance paid out of the foregoing appropriation under House Bill 397.

Certainly you may allow payment of such items of expense out of the contingent appropriation for 1951-53 and so far as said fund will permit.

At first blush it would appear that the foregoing appropriation in House Bill 397 was for the purpose of defraying expenses incurred only during the period beginning July 1, 1953 and ending June 30, 1955. However, a careful examination of said appropriation bill will disclose that the purpose of said appropriation is to pay among other things contingent expenses of the General Assembly for the period of July 1, 1953 and ending June 30, 1955 which does not designate that said appropriation is only for the payment of such

contingent expenses incurred during said period but as will be shown herein by the decision of the Supreme Court that the only question is whether said expenses come within the object to which the appropriation is to be applied. That the period specified in said appropriation merely fixes a period for which said appropriation is available.

A very similar situation arose and was decided in the case of State ex rel. vs. Thompson, 45 S.W. (2d) 1078. The facts involved in that case were briefly these: The relatrix had in 1923 been found eligible to receive a Missouri pension for the deserving blind. Her application had been duly approved and certified to the State Auditor at that time. She remained on the roll until April 1, 1926, at which time the commission administering the blind pension act unwarrantedly removed her name therefrom. She was restored to the roll on September 12, 1928, and thereafter received her pension. As a result of subsequent proceedings she was restored on the roll on May 8, 1931, retroactive to April 1, 1926, the date of her removal therefrom. The respondent in the case, the State Auditor, refused payment for the period from April 1, 1926, to September 12, 1928, on the ground that the then current appropriation for the biennial period beginning the first day of January, 1931, and ending on the 31st day of December, 1932, was not available for that purpose.

The court, in disposing of this contention, said at l.c. 1078:

"The only question here is whether the payment which relatrix seeks to have made out of the state treasury is within the 'object' to which the appropriation under the act just set out is to be applied. If it is a 'pension to the deserving blind as provided for in chapter 51, Revised Statutes, 1929,' it is. The language in the title of the Appropriation Act, 'for the biennial period beginning on the first day of January, 1931, and ending on the thirty-first day of December, 1932,' if read into the act itself, merely limits the period within which the appropriation made shall be available, in conformity with said section 19 of the Constitution; it has no reference to the time when the right to the pensions for the payment of which the appropriation is made should accrue or had accrued, nor to the period for which such pensions are payable.

"Section 8893 (Revision of 1929) provides that an adult blind person having the qualifications therein prescribed 'shall be entitled to receive, when enrolled under the provision of this article, an annual pension,' etc. One is 'enrolled under the provision of this article' when his name is placed on the blind pension roll by the state auditor. Section 8900. When enrolled the pensioner is entitled to a pension from the date of the filing of his application with the probate court. An Applicant's name is placed on the blind pension

roll upon certification by the commission for the blind; it is stricken from the roll upon a like certification when the commission, after notice and hearing, determines that the pensioner is no longer qualified to receive a pension. Section 8896."

While the foregoing decision deals with a blind pension appropriation and the question in this instance is with contingent expenses of the General Assembly, we are unable to see any distinction and believe that said decision is also applicable to contingent expenses of the General Assembly, that is, that the sole object to be determined is whether or not it comes within the object of the appropriation. And we so hold notwithstanding the fact that apparently the General Assembly by its action has placed a different construction on the law for the reason that it has not been uncommon for the General Assembly to make additional appropriations for specifically paying expenses and claims where former appropriations were insufficient, as under House Bill 465 passed by the 67th General Assembly providing for another appropriation for the payment of contingent expenses of the General Assembly for a period ending June 30, 1953 which appropriation further provides that it is in addition to appropriations made for the same purpose for 1951-53. However, it is a well established rule of Statutory construction that legislative construction of a law is not conclusive as to its meaning.

Therefore, in view of the foregoing decision, we conclude that such contingent expenses questioned herein may be paid out of the contingent fund of the General Assembly 1951-53 insofar as such fund will permit and the balance of such contingent expenses may be paid out of the contingent fund under section 8.020, House Bill 397.

CONCLUSION

Therefore, it is the opinion of this department that you may pay any such contingent expenses properly certified out of the contingent fund for the appropriation of the General Assembly 1951-53 insofar as such funds will permit and the balance of such contingent expenses out of the appropriation provided under section 8.020, House Bill 397, passed by the 67th General Assembly.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Aubrey R. Hammett, Jr.

Very truly yours,

JOHN M. DALTON
Attorney General