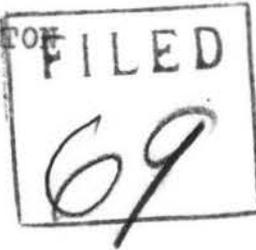


STATE PARK BOARD: State Park Board has no authority to convey
CONSTITUTION: property of State of Missouri. Sec. 3, sub-sec.
APPROPRIATIONS: 1, proposed Senate Bill No. 8, constitutional;
however, Legislature must appropriate money from
fund before State Park Board can expend same.

JOHN M. DALTON
XXXXXXXXXX



February 13, 1953

John C. Johnson
~~XXXXXXXX~~

Senator J. F. Patterson
Chairman
Committee on State Departments
State Capitol Building
Jefferson City, Missouri

Dear Senator Patterson:

This will acknowledge receipt of your request for an
official opinion which reads:

"Please find enclosed copy of Senate Bill
No. 8 relative to the creation of a State
Park Board.

"We had the first hearing on this bill
yesterday before the Committee on State
Departments. I was requested to secure an
opinion from you as to the power of the
present Park Board to negotiate land trans-
actions. I was further instructed to
secure your opinion on Senate Bill No. 8
as to the legality of paragraph 1, section
3, pages 3 and 4 with reference to the
expenditure of money by the proposed State
Park Board on funds received from bequests.
These inquiries are brought about because
of privately owned lands being located
within state park areas and some doubt as
to the title of such property.

"The committee is withholding action on
the bill until some of these questions
are clear."

The State Park Board is a creature of statute and has
only such authority as may be granted by an Act of the Legis-
lature and such additional authority as may be necessary to
carry out that granted by said statute.

In Ray County v. Bentley, 49 Mo. 236, 1.c. 242, the Court,
in holding the county court was merely a creature of statute

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and had only such powers given it by the Legislature, said:

" * * * The County Court does not derive its powers from the county, and it can exercise only such powers as the Legislature may choose to invest it with. Whatever jurisdiction is conferred upon it is wholly statutory. It acts directly in obedience to State laws, independently of the county. Where it acts for and binds the county, it exercises its authority by virtue of power derived from the State government, and it obtains authority from no other source. (Reardon v. St. Louis County, 36 Mo. 555.)"

The present State Park Board Act is very brief, consisting of merely two statutes, namely, Section 253.010, RSMo 1949, creating the State Park Board, and Section 253.020, RSMo 1949, specifying the powers and duties of said Board. Section 253.020 reads:

"1. The state park board shall have the power to acquire by purchase, eminent domain or otherwise, all property necessary, useful or convenient for the use of said park board or the exercise of its powers hereunder necessary for the recreation of the people of the state of Missouri. In the event the right of eminent domain be exercised, it shall be exercised in the same manner as now or hereafter provided for the exercise of eminent domain by the state highway commission.

"2. Said park board shall have the power to make and promulgate all rules and regulations as it may deem necessary for the proper maintenance, improvement, acquisition and preservation of all state parks.

"3. Said park board is hereby authorized to employ such persons or assistants as may be necessary and may fix the compensation of persons thus employed within the amount appropriated therefor by the legislature. All vouchers for the payment of bills or

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for compensation shall be drawn and approved by the director of state parks and when presented to the state auditor shall be paid out of the funds appropriated for such purposes."

The foregoing provision vests in the State Park Board broad powers to acquire all necessary property, even to the extent of acquiring said property by eminent domain; however, it is conspicuous by its silence as to any authority to sell or dispose of any of its property. While said statute does vest in said Board power to make and promulgate all rules and regulations it may deem necessary for the proper maintenance, improvement, acquisition and preservation of all State Parks, this in itself cannot possibly be considered authority to sell or dispose of State property.

Therefore, in the absence of any specific statutory or constitutional authority authorizing said Board to sell any State property, said Board cannot do so. The Legislature is the only body that has such authority and retains it until such time as it sees fit to delegate it to some State agency or the State Park Board.

You further inquire as to the legality of paragraph 1, Section 3, of proposed Senate Bill No. 8, with reference to the expenditure of money by said Board on funds received from bequests as provided in said section.

We assume that this inquiry is directed at the authority of said Board to expend said funds from such bequests without the necessity of first having such funds appropriated by the Legislature.

There can be no question as to the validity of that portion of said bill authorizing the State Park Board as the agency to accept said gifts and contributions or money or real or personal property. This has been done repeatedly and upheld by the Courts. Furthermore, the Legislature can also designate the fund to which such money may be placed and the purposes for which said gifts and bequests may be used, and provide that such can only be expended by the State Park Board. Section 15, Article IV of the Constitution of Missouri, indicates that the General Assembly may designate and allocate certain money and revenue of the State to certain funds.

In view of the foregoing, the only remaining question as to the validity of said section is whether the fund stands

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appropriated or is it necessary for the General Assembly to appropriate money out of said Park fund before said Board may expend it for any purpose. The language used in this Section 1 is very clear. At first blush, we would be inclined to think that the General Assembly intended that it should be appropriated. However, Section 28, Article IV, Constitution of Missouri, provides that no money shall be withdrawn from the State Treasury except by warrant drawn in accordance with an appropriation made by law. Notwithstanding the foregoing constitutional inhibition, there may be exceptions to same, but only when excepted therefrom by constitutional amendment, such as Section 30, Article IV of the Constitution of Missouri, which provides that certain State revenue shall be credited to a special fund and stand appropriated without legislative action for certain specified purposes. The Court, in State ex rel. Publishing Co. v. Hackmann, 314 Mo. 33, l.c. 51, in construing Section 44a of the Constitution of Missouri, 1875, which was similar to present Section 30, Article IV, Constitution of Missouri, said:

"Relator contends that Section 44a of Article IV of the Constitution appropriates, without further legislative action, money from the motor vehicle license taxes, for the payment of the maintenance of the State Highway Commission.

"The language thus sought to be construed by relator is as follows:

"Any motor vehicle registration fees or license fees or taxes, authorized by law, except the property tax thereon, less the cost and expense of collection and the cost of maintaining any State Highway department or commission, authorized by law, shall, after the issuance of such bonds, and so long as any bonds herein authorized are unpaid, be and stand appropriated without legislative action for and to the payment of the principal and interest of said bonds, and shall be credited to a sinking fund to be provided for by law." (See Sec. 44a, Mo. Const.; Laws 1921, 1st Ex. Sess., p. 196.)

"This provision makes no attempt to appropriate without legislative action, the

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money to pay the maintenance expense of the Highway Commission. It does appropriate without further legislative action that portion of the money received from automobile license fees which remains after deducting the cost of collecting the tax and maintaining the Highway Commission, and it appropriates the remainder to the payment of the principal and interest of certain bonds. It makes no attempt whatever to appropriate without legislative sanction the amount needed for the expenses of the Commission. Who, therefore, is to determine the amount required to maintain the Highway Commission? Is this to be determined by the Highway Commission, unhampered by legislative permission, or by the Legislature in the regular way by an appropriation act?"

It is so well established that we deem it unnecessary to cite authority that the General Assembly cannot with any validity enact legislation in conflict with the Constitution of Missouri or the United States. So, in view of the foregoing, we are of the opinion that the bill is valid. However, while the money in said fund can be expended only by the State Park Board, it must first be appropriated by the General Assembly.

CONCLUSION

Therefore, it is the opinion of this department that under the present State Park Board Act, the State Park Board is vested with no authority to negotiate or convey any land of the State of Missouri. Further, Section 3, sub-section 1 of said proposed Senate Bill No. 8, is valid as to all provisions contained therein; however, said provision does not vest authority in said Board to expend the money placed in said Park fund without first being appropriated by the General Assembly.

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

Yours very truly,

JOHN M. DALTON
Attorney General