

APPROPRIATIONS: Members and secretary of Industrial Commission of Missouri are to be compensated for the period July 1, 1948, to July 19, 1948, from funds appropriated under Sec. 4.270 of House Bill No. 450 of 64th General Assembly.

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June 17, 1948

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Honorable B. H. Howard  
Comptroller  
Department of Revenue  
Jefferson City, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this office, reading as follows:

"Sections 3 and 4, Laws of 1945, Page 1103 provides that the members and the secretary of the Industrial Commission shall be paid from the following sources; 40% from the Unemployment Compensation Administration Fund, 40% from the Workmen's Compensation Fund, 6% from the Mining Department Fund, and 14% from General Revenue.

"Senate Bill #220, 64th. General Assembly repeals the above mentioned sections and enacts two new sections in lieu thereof. These new sections provide that the members and secretary shall be paid 40% from the Unemployment Compensation Administration Fund, and 60% from General Revenue. Senate Bill #220 will become effective July 19, 1948.

"Section 4.270, House Bill #450, 64th. General Assembly appropriates money for the salaries of the members and the secretary of the Industrial Commission in accordance with the percentage stated in Senate Bill #220 for the period beginning July 1, 1948 and ending June 30, 1949. No appropriation was made to cover the salaries provided for in the Laws of 1945 during the period between June 30, 1948 and July 19, 1948, the

date the new percentage basis becomes effective.

"In view of the above conflict, we will appreciate an opinion as to the basis for computing the salaries of the members and the secretary of the Industrial Commission for the month of July 1948."

You have inquired about the payment of the salaries of both the members of the Industrial Commission of Missouri and the secretary of such commission. However, in this opinion we have considered in the body thereof only the sections applicable to the members, as the statutes relating to the secretary are similar.

Section 3 of an Act found Laws of Missouri, 1945, page 1101, reads as follows:

"Each member of the Commission shall be paid a fixed monthly salary at the rate of Seven Thousand Five Hundred Dollars (\$7,500.00) per year. The salaries of the members of the Commission shall be paid from the following sources: 40% from the Unemployment Compensation Administrative Fund, 40% from the Workmen's Compensation Fund, 6% from the Mining Department Fund, and 14% from the General Revenues of this State." (Emphasis ours.)

In conformity with the percentages established by the above statute relating to the sources of the funds from which the salaries of the members of the Industrial Commission are to be paid, the Legislature appropriated an amount sufficient to pay such salaries, prorated according to such percentages from the various funds. This appropriation will expire on June 30, 1948, and at that time will have been completely exhausted.

Section 3 of the Act found Laws of Missouri, 1945, page 1101, quoted supra, was repealed by Senate Bill No. 220 of the 64th General Assembly, such repealing act becoming effective July 18, 1948. Section 3 of the repealing and reenacting bill reads as follows:

"Each member of the Commission shall be paid a fixed monthly salary at the rate of Seven Thousand Five Hundred Dollars (\$7,500) per

annum. The salary of each member of the Commission shall be paid from the following sources: Three Thousand Dollars (\$3,000) per annum from the Unemployment Compensation Administration Fund for services rendered the Division of Employment Security, and Four Thousand Five Hundred Dollars (\$4,500) per annum from the General Revenue of the State." (Emphasis ours.)

In conformity with the last-quoted statute, the 64th General Assembly enacted Section 4.270 of House Bill No. 450, reading, in part, as follows:

"There is hereby appropriated out of the State Treasury, chargeable to the funds as hereinafter specified, the sum of Twenty-seven Thousand Dollars (\$27,000.00) for the purpose of paying the salaries of the members and secretary of the Industrial Commission of the Department of Labor and Industrial Relations; for the period beginning July 1, 1948 and ending June 30, 1949, as follows:

"A. PERSONAL SERVICE:

Salaries of the members of the Industrial Commission, payable out of funds as follows:

Out of General Revenue Fund..... \$13,500.00

Out of Unemployment Compensation Administration Fund..... \$9,000.00

Total Salaries of Members of Industrial Commission.....\$22,500.00

\* \* \* \* \*

You will note that the only effect of such repeal and re-enactment and the passage of the appropriation bill set out is to change the percentages and sources of the funds out of which

the members of the Industrial Commission are to be paid and to provide an appropriation for the fiscal year ensuing the first day of July, 1948, from funds in accordance with such changed percentages and sources. Your attention is also directed to the fact that such salaries are payable upon a fixed monthly basis and that the first of such fixed monthly salaries will become due subsequent to the effective date of Senate Bill No. 220 of the 64th General Assembly.

In the light of the foregoing, your inquiry resolves itself into this question: Are the funds appropriated under Section 4.270 of House Bill No. 450 of the 64th General Assembly available for the payment of the salaries of the members of the Industrial Commission when the first of such fixed monthly salaries become due upon July 31, 1948? We believe that such appropriation is so available and that without regard to the fact that under the prior Act the salaries for the first eighteen days of such month were to be derived from different sources than upon the due date of the first monthly salary.

The Legislature has so construed the Act by having made the appropriation under Section 4.270 of House Bill No. 450 of the 64th General Assembly, as reference thereto indicates that in making such appropriation the percentages and funds affected thereby are in accordance with the new Act. The amounts so appropriated from the several funds are mathematically sufficient, and no more and no less, to pay the annual salaries of the three members of the Industrial Commission. This construction placed upon the statute by the Legislature is entitled to some weight.

As declared in State ex rel. Davis v. Smith, 75 S. W. (2d) 828, the power of the Legislature over the public funds of the state is supreme, subject to constitutional restrictions. The court therein said:

"Relator makes a contention that the power of the General Assembly with respect to the public funds raised by general taxation, subject to express constitutional limitations, is supreme. In this connection it is also contended that the Constitution does not restrict the power of the Legislature to make appropriations from the general revenue to compensate public officers for services rendered the public and reimburse them for expenses incurred in the performance of such service.

"We agree that the power of the Legislature over these matters, subject to constitutional limitations, is supreme. We also agree that the Constitution does not prevent the Legislature from providing that public officers' salaries and expenses shall be paid out of the general revenue.  
\* \* \*

The case mentioned might be urged as authority for adopting a contrary view to that expressed in this opinion. The factual situation presented in the case involved the payment of the salary of a member of the Board of Barber Examiners. This board had been created under a statute authorizing the payment of the salaries of the members thereof out of moneys collected by the board and "out of this fund only." Without repeal of this statute or amendment thereto, a subsequent Legislature attempted to appropriate out of the general revenue of the state an amount sufficient to pay the salaries of the board members. Upon the refusal of the State Auditor to use any of such money for the payment of salaries, mandamus was brought. The writ was denied, the court reasoning the Legislature was without power to make such an appropriation in the face of the statute creating the board and providing for the payment of such salaries solely from funds collected by such board.

We do not consider this case to express a view different from that set forth in this opinion. Rather, we think the following quotation from the case supports the view which we have herein expressed:

" \* \* \* This being true, the Legislature had authority to provide that all or any specified part of the salary and expenses of the barber board should be paid out of the general revenue, but it did not do so. On the contrary, it has provided, in express terms, by section 13525, R. S. 1929 (Mo. St. Ann. section 13525, p. 637), that the salaries and expenses of such board shall be paid by warrants drawn against the fund created from fees collected by the board and paid into the state treasury, and against that fund only. The Legislature could, at any time, provide a different method for paying the salaries and expenses of this board by amending section

13525 or by repealing it and enacting a new law in lieu thereof, but until it does so, section 13525, R. S. 1929 (Mo. St. Ann. sec. 13525, p. 637), remains the law of the state. We cannot escape the conclusion that if section 13525, R. S., is still the law, and if it provides that the salaries and expenses of the board shall be paid out of the fund created from the fees collected by the board, and out of that fund only, the attempt to appropriate money out of the general revenue fund to pay any part of such salaries or expenses is contrary to the existing law of the state, as declared in section 13525, supra." (Emphasis ours.)

You will note that the emphasized portion of the quotation clearly indicates that had the existing statute been repealed or amended, the appropriation would have been valid. In the present case, that is exactly what has occurred and we think such action was within the power of the Legislature.

Since provisions relating to the salary of the secretary of the Industrial Commission of Missouri are quite similar to those heretofore quoted, we arrive at the same conclusion with respect thereto.

#### CONCLUSION

In the premises, we are of the opinion that payment of the salaries of the members and secretary of the Industrial Commission of Missouri for the month of July, 1948, and subsequent months of the fiscal year 1948-1949 may lawfully be made from the funds appropriated under Section 4.270 of House Bill No. 450 of the 64th General Assembly.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR  
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