

Opinion No. 528.**Legislative Assembly—Appropriations
—Salaries—Payroll—Gasoline
Inspection Fund, Gasoline Li-
censing Division—Statutes,
Construction of.**

HELD: In House Bill No. 337, Laws of 1933, to avoid ambiguity by reason of evident inadvertant omission, the words 'From the Gasoline Inspection Fund' may be inserted immediately under the words "Gasoline Licensing Division".

Should said appropriation be invalid because it is an appropriation for a special purpose from a special fund included within a general appropriation bill, still, under Chapter 109, Laws of 1927, the State Gasoline Inspection Fund may be drawn upon for the payment of salaries of employees engaged in the work of inspection as outlined in said Act.

May 24, 1934.

Your letter of May 4, which is before us, is as follows:

"We have just received a payroll from the Public Service Commission, Gasoline Licensing Division, in the amount of \$325.00, charging \$78.22 against the appropriation for salaries

and \$246.78 to the Gasoline Licensing Division fund.

"It appears that the appropriation in House Bill No. 337 of the Twenty-Third Legislative Assembly, which bill appropriated \$2400.00 per year for salaries, is exhausted except for the \$78.22, leaving that department short \$246.78 on salaries for the month of April.

"Our question is whether this payroll may be approved, thereby paying for salaries directly from the fund."

With the view of preventing the sale of inferior gasoline and kerosene in this state the legislature at its regular session in 1919 enacted Chapter 203, and for the purpose of enforcing the provisions thereof created a fund to be known as the State Gasoline Inspection Fund. (State v. Brannon, 86 Mont. 200.) The fund was discontinued by Chapter 37, Laws of 1925, but it was re-established by Chapter 109, Laws of 1927, whose object is similar to that of Chapter 203.

Sections 1, 2 and 3 and the last two sentences of section 17 of Chapter 109, provide:

"Section 1. All persons, firms, co-partnerships, corporations, trusts or agencies, engaged, directly or indirectly, in the business of selling or offering or advertising for sale or in the business of refining or manufacturing or keeping for sale within the State of Montana any gasoline, kerosene, distillate, road oil, fuel oil, or any oil or gas or oil and gas product, lubricating oil and greases, for use in motor vehicles or in internal combustion engines, shall make application to the Public Service Commission of Montana, upon such blank forms as may be provided by said Commission for the right to do business in the State of Montana and the making of such application, shall be a condition precedent to the right of any such person, firm, co-partnership, corporation, trust or agency to transact any such business within the State of Montana and upon the making and filing of such application and the payment of the proper fee, a license shall issue to the applicant.

"Such persons, firm, co-partnerships, corporations, trusts or agencies are hereinafter, for brevity, designated dealers, and the term 'dealers' when-

ever used herein, shall include all persons, firms, co-partnerships, corporations, trusts or agencies described in this section.

"Section 2. Each dealer shall pay a license fee of One Dollar for each separate place of business where such dealer transacts business, and One Dollar additional for each gasoline pump or vending machine in excess of one used at each place of business. All licenses shall be annual and expire December thirty-first. Each refinery doing business in the State of Montana shall pay an annual license fee of One Dollar.

"Section 3. All fees and receipts taken and received by said Commission in the administration of this act shall be transmitted and credited to the State Gasoline Inspection Fund, hereby created, and the State Treasurer of the State of Montana shall have the custody of said fund and keep the same separate from any other funds under his control; and all of the expenses incurred in the administration of this act, or in enforcing the terms hereof shall be paid out of said fund in the same manner as other claims against the State of Montana.

"Section 17. * * * The Public Service Commission shall employ from time to time such inspectors as said Commission shall deem necessary to carry out the provisions of this Act, and said Commission shall fix the compensation of such inspectors. The inspectors herein provided for shall be paid from the 'Gasoline Inspection Fund' provided for in this Act and all expenses of carrying out the provisions of this Act shall be paid from said Fund."

Because of what is to follow it is proper to add that these sections have never been amended.

So much of Section 1 of House Bill No. 337, Laws of 1933, as is pertinent here, is as follows:

"That the following sums, or so much thereof as shall severally be found necessary, be, and the same are hereby appropriated out of any money in the state treasury and from special funds enumerated herein, not otherwise appropriated, for the objects and purposes hereinafter expressed for the period beginning July 1, 1933, and ending June 30, 1934. * * *

"BOARD OF RAILROAD COMMISSIONERS FROM THE GENERAL FUND

FOR RAILROAD AND PUBLIC SERVICE COMMISSION

For Salaries, Thirty Thousand Nine Hundred Sixty-seven Dollars	\$ 30,967
For Capital and Repairs, Two Hundred Fifty Dollars....	250
For Other Operation, Two Thousand Seven Hundred Dollars	2,700
For Expenses to Plead Rate Case Before United States Supreme Court, One Thousand Five Hundred Dollars	1,500

"FOR OIL AND GAS DIVISION

For Salaries, Two Thousand Eight Hundred Fifty-six Dollars	\$ 2,856
For Other Operation, Two Thousand Dollars	2,000

"MOTOR CARRIER DIVISION FROM THE REVOLVING OR MOTOR CARRIER FUND

For Salaries, Five Thousand Five Hundred Sixty-five Dollars	5,565
For Other Operation, Two Thousand Five Hundred Dollars	2,500

"It is further provided that any additional money remaining in this fund shall be used to pay that portion of operating expenses as set forth under the Railroad and Public Service Commission.

"GASOLINE LICENSING DIVISION

For Salaries, Two Thousand Four Hundred Dollars....	\$ 2,400
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"So much thereof as may be necessary for other expenses, in connection with the work of gasoline inspection, as defined under Chapter 109 of the Session Laws of 1927 and amended under Chapter 192 of the Session Laws of 1931."

Section 2 of the Bill, which appropriates public money for the fiscal year ending June 30, 1935, is in all other respects almost identical with Section 1.

The phrase "so much thereof as may be necessary for other expenses, in connection with the work of gasoline inspection, as defined under Chapter 109 of the Session Laws of 1927 and amended under Chapter 192 of the Ses-

sion Laws of 1931" cannot refer to the appropriation of \$2400 for salaries as that would involve an absurdity. Evidently there is something missing from the appropriation for the Gasoline Licensing Division. In view of the specific reference to Chapter 109 we think it is reasonably certain that the legislature intended to insert the words "From the Gasoline Inspection Fund" immediately under the words "Gasoline Licensing Division" and that the failure to do so was the result of inadvertance on its part. We are fortified in this position by a survey of the practice followed by the legislature for several years in making appropriations from other special funds.

Where it appears from the context that certain words have been inadvertently omitted from a statute, the court may supply such words as are necessary to complete the sense, and to express the legislative intent, but it cannot supply words purposely omitted, and should supply an omission only when the omission is palpable and the omitted word plainly indicated by the context; and words will not be added except when necessary to make the statute conform to the obvious intent of the legislature or prevent the act from being absurd; and where the legislative intent cannot be accurately determined because of the omission, the court cannot add words so as to express what might or might not be intended. (59 C. J. 992; *Mills vs. Board of Equalization*, 97 Mont. 13; *State v. District Court*, 83 Mont. 400; *Landrum v. Flannigan*, 56 Pac. 753; *State v. Chicago Mill and Lumber Corp.*, 45 S. W. (2d) 26; *Bench Canal Co. v. Sullivan*, 271 Pac. 221; *State v. Brodigan*, 141 Pac. 988; *Continental Oil Co. v. City of Santa Fe*, 177 Pac. 742; *Morrison-Merrill & Co. v. Industrial Commission*, 18 Pac. (2d) 295; *Protest of Chicago, etc., Co.*, 279 Pac. 319; 2 *Lewis' Sutherland Statutory Construction*, secs. 382, 410-413; 25 R. C. L., sec. 225, page 973.)

After seriously considering the foregoing principles of statutory construction, we incline to the view, though not without some misgiving, that the omitted words may be supplied. However, arriving at this conclusion does not answer the question submitted nor solve the problem involved. It affords only a reasonable starting point for an ex-

amination of several other questions that are involved. As construed herein, with the omitted words inserted, the section would read:

**"GASOLINE LICENSING DIVISION
FROM THE STATE GASOLINE
INSPECTION FUND**

For Salaries, Two Thousand
Four Hundred Dollars.....\$ 2,400

So much thereof as may be necessary for other expenses in connection with the work of gasoline inspection, as defined under Chapter 109 of the Session Laws of 1927 and amended under Chapter 192 of the Session Laws of 1931."

Recourse to Chapter 109, Laws of 1927, and amendatory statutes does not reveal that the Legislature has set up within the Public Service Commission a "Gasoline Licensing Division" or any other division. When we consider the Act itself, and amendments, it is patent that if the Act contemplates or authorizes the setting up of divisions within the Commission for the purpose of administering the provisions thereof, a mere licensing division would be inadequate inasmuch as the Act provides two separate and distinct functions for the Commission to perform; one, to license all persons described in section 1 of the Act, and, two, to inspect (a) gasoline and allied products enumerated and (b) measuring devices or other apparatus used in connection with the sale of the enumerated commodities. Bearing in mind these separate functions, the Public Service Commission must not only set up a licensing division but it must also set up an inspection division if it is to discharge the duties imposed upon it. Having used the terminology "Gasoline Licensing Division" did the Legislature intend to appropriate "for Salaries, Two Thousand Four Hundred Dollars.....\$2,400" for the licensing function only, leaving section 17 of the Act which provides for the appointment of inspectors and that they "shall be paid from the 'Gasoline Inspection Fund,'" to take care of the inspection function? Or, did the Legislature intend that the sum of \$2,400.00 should represent the total expenditure for each fiscal year for salaries for both functions—licensing and inspection? This last interpretation would seem to require the further addition or insertion of lan-

guage and change the words "GASOLINE LICENSING DIVISION" to "GASOLINE LICENSING AND INSPECTION DIVISIONS." Failure to mention a gasoline inspection division may have been due to inadvertence, or the legislature may have considered that the terminology used i. e. "GASOLINE LICENSING DIVISION" was sufficient to embrace all of the work that is performed by the Commission under Chapter 109 and amendments, or the legislature may have, as above suggested, merely desired to limit the amount that could be spent for licensing only. In this last view the money in the State Gasoline Inspection Fund would still be available for the payment of the wages or compensation of inspectors carrying on the inspection as distinguished from the licensing function.

We are advised there is at present (as of May 1, 1934) in the State Gasoline Inspection Fund approximately \$2,500.00. All of this money was collected under the provisions of section 2 of Chapter 109. Under the express terms of the Act this money is committed to the purpose of enforcing the provisions of the Act, the ultimate purpose of which is to protect the consumers of gasoline and allied products in Montana from inferior and substandard commodities and to insure the integrity of measuring devices. The importance of this Act and its relation to the well-being of the citizens of Montana has been emphasized by the Supreme Court of Montana. In State ex rel. Public Service Commission v. Brannon, et al., 86 Mont. 200, 216, the Court said:

"The intention of the legislature was to prevent the sale of inferior gasoline and kerosene in this state; the law provides for the maintenance of certain standards and provides for the prosecution of those who transgress its provisions. Society in general is affected; it may be said that one of those petroleum products is used for one purpose or another by almost every family in the state; the well-nigh universal use of gasoline needs no comment.

"Solicitude for the public welfare is the basis of the law."

If an interpretation is placed upon H. B. 337 that renders unavailable to the Public Service Commission the

present balance in, and accruals to, the State Gasoline Inspection Fund it virtually means the cessation of all inspection activities until July 1, 1935, the period covered by the appropriation in H. B. 337. Without inspectors in the field to obtain samples and test measuring and recording gauges there remains to the Commission no practical means of functioning except in an extremely limited manner. The Commission would still be in a position to have analyses made of samples submitted by dealers (under Section 12) or by users (under paragraph 2 of Section 17) but it is not likely that any reasonable amount of protection could be afforded the general public under such a limited scheme of operation. The great interest that the public has in the continuation of the work of inspection emphasizes the great importance of the problem submitted. The legislature having created the State Gasoline Inspection Fund, no question can be raised concerning its right, in appropriate manner, to control the disposition of the same. (*State v. Clausen*, 229 Pac. 5; *B. F. Sturtevant Co. v. O'Brien*, 202 N. W. 324; *Robb v. Knapp*, 171 Pac. 1156; *State v. Stover*, 27 Pac. 850; *Jackson v. Gallett*, 228 Pac. 1068; *Edwards v. Childers*, 228 Pac. 472; *Gamble v. Velarde*, 13 Pac. (2d) 559; *Holmes v. Olcott*, 189 Pac. 202; 59 C. J. 240.) But having unequivocally and clearly dedicated this fund to an important and necessary work, as it did in Chapter 109, it would appear that, inasmuch as requisite funds are in existence, the public interest requires that the purposes and objects of the act be carried out until such time as the legislature clearly and unequivocally expresses a contrary attitude. Viewing the matter wholly as one of interpretation, we do not believe that the legislature, in view of the language employed, has imposed any greater restriction upon the use of the State Gasoline Inspection Fund by the Public Service Commission than to limit its expenditures for salaries for licensing work to \$2400.00 for each fiscal year and that the State Gasoline Inspection Fund may be drawn upon for the payment of salaries of employees engaged in carrying on the work of inspection as outlined in the Act as long as there is money in the Fund.

A more serious question is presented in connection with the inclusion of the

appropriation under consideration in H. B. 337, which is manifestly a general appropriation bill. Section 33 of Article V of the Constitution of the State of Montana provides:

"The general appropriation bills shall embrace nothing but appropriations for the ordinary expenses of the legislative, executive and judicial departments of the state, interest on public debt and for public schools. All other appropriations shall be made by separate bills, each embracing but one subject."

Section 33 of Article V appears to bear the same relation to general appropriation bills that Section 23 of the same Article bears to bills relating to general legislation. The Constitution of the State of Pennsylvania has provisions similar to those above mentioned. Section 15 of Article 3 of the Pennsylvania Constitution provides in part that "the general appropriation bill shall embrace nothing but appropriations for the ordinary expenses of the executive, legislative and judicial departments of the Commonwealth," etc. Regarding this subject, the Supreme Court of Pennsylvania, in *Commonwealth ex rel Greene v. Gregg*, Auditor General, 29 Atl. 297, said:

"The history and purpose of that section are well known. It was aimed at the objectionable practice of putting a measure of doubtful strength, on its own merits, into the general appropriation bill,—in legislative phrase, 'tacking it on as a rider',—in order to compel members to vote for it, or bring the wheels of government to a stop. The same constitutional intent is imposed in Section 16 of Article 4, giving the governor power to disapprove separate items of appropriation bills. It is the practice of thus forcing the passage of extraneous matters, not germane to the purpose of the bill itself, that was intended to be abolished. As to general legislation, the same object, among others, was secured by the provision of Section 2 of Article 3 that 'no bill, except general appropriation bills, shall be passed, containing more than one subject'. General appropriation bills, from their nature, usually cover a number of items, not all relating strictly to one subject. They were therefore excepted from the requirement of Section 2, and this exception

necessitated the special section 15 relating to them. The object of both is the same. * * * * In passing general appropriation bills, the constitution limits them to the 'ordinary expenses of the executive, legislative and judicial departments,' and some other enumerated matters, and every valid appropriation in this form must appear to be reasonably within the description of 'ordinary expenses'."

Is an appropriation for gasoline licensing and inspection an appropriation reasonably within the description of "ordinary expenses"? or is it an appropriation for a special purpose? If it is an appropriation for a special purpose the requirement is that it must be in a bill containing nothing but the appropriation itself. (*Hill v. Rae*, 52 Mont. 378, 388; *Miller Ins. Agency v. Porter, et al.*, 93 Mont. 567, 571.) Ordinary expenses, within the meaning of section 33 of Article V would appear to comprehend such expenses as are met out of the general revenues of the State recruited under the power of the State to raise revenue by taxation or licensing persons and corporations doing business within the State. When resort must be had to a special fund, raised in a special manner and not connected in its origin or otherwise with the general public revenue, for the payment of an expense it would, on the face of it, appear to be a special expense rather than an ordinary one. Considering the status of the money in the State Gasoline Inspection Fund with reference to the general revenues of the state accruing from taxes and ordinary licenses, it would be observed from the Act that the money in the State Gasoline Inspection Fund is no part of the general fund or general revenues of the state. As created by Section 3 of Chapter 109, Laws of 1927, the fund is made up of all fees and receipts taken and received by the Public Service Commission in the administration of the Act. These fees are collected by the Commission and transmitted to the State Treasurer and credited to the State Gasoline Inspection Fund. Section 3 provides that "the State Treasurer of the State of Montana shall have the custody of said fund and keep the same separate from any other funds under his control;". This fund is carried upon the books of account of the State Treasurer and

State Auditor as a state trust and agency fund. This is done, presumably, in accordance with Section 8 of Chapter 110 of Laws of 1923.

Further support for the proposition that the money derived from the licenses and receipts received under Chapter 109 does not constitute a part of the general revenues of the state is found in the fact that Chapter 109 is not such a bill as would have to originate in the House of Representatives under the provision of Section 32 of Article V requiring all bills for raising revenue to originate in the House of Representatives. (*State v. Bernheim*, 19 Mont. 512; *Evers v. Hudson*, 36 Mont. 135.) Chapter 109 is to be regarded as a police regulation rather than a statute for revenue purposes. (*id.*)

If the theory is pursued that an appropriation out of the State Gasoline Inspection Fund must be made by separate bill in that an appropriation thereof is not for the ordinary expenses of the legislative or executive departments of the state and that its inclusion in House Bill 337 renders the appropriation out of this special fund invalid, there occurs two questions:

(1) Does Chapter 109, Laws of 1927, appropriate the State Gasoline Inspection Fund for the purposes and objects of the act? and

(2) If it is so appropriated, did such appropriation lapse at the end of two years?

It appears that the provisos of Sections 3 and 17 meet up with the requirements of Section 10, Article XII of the Constitution, if the same is applicable, that "no money shall be drawn from the treasury but in pursuance of specific appropriations made by law" (*see Ryan v. Riley*, 223 Pac. 1027 (Cal.); *Holmes v. Olcott*, 189 Pac. 202 (Ore.); *re Opinion of Judges*, 203 N. W. 462 (S. D.); *McConnell v. Gallet*, 6 Pac. (2d) 143 (Ida.); *Edwards v. Childers*, 228 Pac. 472 (Okla.); and *Commonwealth v. Powell*, 94 Atl. 746 (Penna.) The rule of the constitutional provision may be stated "an appropriation, to be valid, must either be limited in amount or drawn from a limited fund." (*Re Opinion of Judges*, 203 N. W. 462.)

Assuming, on the basis of the authorities cited, that Chapter 109 does

make a valid appropriation of the State Gasoline Inspection Fund for the purpose of paying all expenses incurred in the administration of the Act and in enforcing the terms thereof, was it necessary for the legislature thereafter to bi-ennially appropriate out of this special fund for the objects and purposes stated in the Act? The last sentence of Section 12 of Article XII of the Constitution reads: "no appropriation of public moneys shall be made for a longer term than two years". Having in mind that Article XII of the Constitution "deals with revenue and taxation exclusively and does not attempt to deal with police regulations" (*Johnson v. City of Great Falls*, 38 Mont. 369, 375), and that section 12 in particular deals generally with the expenditures of the state's money derived from an exercise of the taxing power, it is a permissible construction of Section 12 that the concluding sentence thereof, namely, that "no appropriation of public moneys shall be made for a longer period than two years" has reference to appropriations out of the public revenues of the state and not to special or trust funds. (See *State ex rel. Bonner v. Dixon, et al.* 59 Mont. 58, 76, and *State ex rel. Bennett v. State Board of Examiners*, 40 Mont. 59, 65). That the legislature itself has for a number of years entertained this notion of the limitation of this provision is apparent from the provisions of Section 193, Revised Codes of Montana, 1921, which provides as follows:

"STATE MONEYS, HOW EXPENDED BY TREASURER.

No moneys received by the state treasurer shall be paid out by him except upon state warrant issued by the state auditor, and the state auditor shall not issue his warrant upon the state treasurer save by virtue of unexhausted appropriation therefor made by the legislative assembly, and after the presentation to him of a claim duly approved by the state board of examiners, save and except for salaries and compensation of officers fixed by law; **provided, however, that nothing in this act contained shall require an appropriation by the legislature for the administering of any specific trust funds administered by any state board, commission or department."**

Further accentuating this apparent legislative viewpoint is the fact that no appropriation was made out of the State Gasoline Inspection Fund by the legislature in either the session of 1929 or the session of 1931. The legislature doubtless had the idea in mind that the original appropriation and dedication contained in Sections 3 and 17 of Chapter 109 were continuing appropriations not subject to the limitation of Section 12 of Article XII.

There is authority for the proposition that an appropriation from a special fund raised in a special manner and not connected in its origin or otherwise with the general public revenue is not subject to the time limitation imposed by the Constitution on ordinary appropriations. (*State v. Hall*, 158 N. W. 228, 156 N. W. 16, 99 Neb. 89; *State v. Brian*, 120 N. W. 916, 84 Neb. 30; *Fisher Bros. Company v. Brown*, 146 N. E. 100, 111 Ohio St. 602.) Under this view the dedication of the State Gasoline Inspection Fund continues in effect as long as Chapter 109 remains in force. (*Commonwealth v. Powell*, 97 Atl. 746).

We have above indicated that with some misgivings we incline to the view that the omitted words "From the State Gasoline Inspection Fund" may be supplied. Should our misgivings be well founded, the particular appropriation under consideration would doubtless fail by reason of ambiguity and uncertainty, (*Hilburn v. St. Paul M. & M. Ry. Co.*, 23 Mont. 229, *State ex rel. Holliday v. O'Leary*, 43 Mont. 157), in which event the original dedication and appropriation found in sections 3 and 17 of Chapter 109, Laws of 1927, would prevail.

Under any reasonable view that may be taken of the problem submitted, it is our conclusion that the payroll in question may be approved and the salaries paid directly from the State Gasoline Inspection Fund.