

**OPINION
47-14**

April 17, 1947 (OPINION)

APPROPRIATIONS

RE: Repairing and Recalking of Capitol Building

Your letter of April 16, 1947, addressed to this office, has been received, in which you ask for the opinion of this office on the following situation.

Senate Bill 54 is the general appropriation bill for the maintenance of the state government and includes for the board of administration an item of \$50,000.00 for repairing and recalking the capitol building. The board of administration has charge and supervision of the capitol building and appurtenances, and it is therefore the duty of such board to take the necessary action for the repairing and recalking of the building.

The board has advertised for bids to be submitted for this work, and recently submitted a voucher to the state auditor's office for payment of the cost of advertising for bids. The auditor's office now refuses to approve the payment of this voucher on the ground that the appropriation is not available until after July first.

Section 2 of said appropriation bill provides as follows:

Unless otherwise specifically stated, the appropriations herein made shall be available for the expenses to be incurred in and about the several purposes herein set out, during the fiscal period of two years, beginning July 1st, 1947, and ending June 30th, 1949."

As a general proposition, it may be stated that the maintenance of the state government so far as salaries of officers, clerks, and other expenses are concerned was all provided for by the appropriation of the 1945 legislative assembly and covers the period extending to July 1, 1947.

However, the item of \$50,000.00 for repairing and recalking the capitol building is not intended for the payment of expenses to be incurred from time to time, but is intended for defraying the expense of a project which should be done as soon as practicable. In other words, it is not an expenditure of maintenance which is payable from month to month or quarter to quarter. The capitol building is in need of such repairs and there would be no purpose in waiting until the first of July. Furthermore, Senate Bill 54 carries an emergency clause which reads as follows:

This Act is necessary to the immediate preservation of the public peace, health and safety. The reason for this is that it contains the general appropriation and provides the means of continuing and maintaining the State Government and to enable it to perform its proper functions, among which are the preservation of the public peace, health and safety of the

people, and without the means provided for by this Act the functions of the State Government will be suspended. This Act will therefore in its entirety go into instant operation upon its approval by the Governor."

Section 67 of the constitution of this State, as amended by article 27, provides that an emergency clause shall take effect and be in force from and after its passage and approval by the governor.

Senate Bill 54 has been duly approved by the governor and has therefore been in full force and effect from and after such approval.

The reason for the emergency clause is explained therein, namely, that the general appropriation provides the means of continuing and maintaining the state government and to enable it to perform its proper functions, among which are the preservation of the public peace, health, and safety of the people, etc.

As already pointed out, the item of \$50,000.00 has been appropriated for one specific purpose, namely, repairing and recalking the capitol building, and when this work is done and paid for the appropriation has served its purpose. No good purpose can be served by postponing this work until July first, and it would be absurd to say that such was the intention of the legislative assembly.

In construing any statute, the rule of common sense and the purpose and intent of the statute must take precedence over mere technical niceties and the statute as a whole must be considered rather than words and phrases taken out of their context. In other words, in construing any statute, its general intent and purpose must be taken into consideration.

It is, therefore, the opinion of this office that the voucher for advertising for bids for the work to be done on the capitol building is a legitimate expense payable forthwith out of the appropriation of \$50,000.00 referred to herein.

NELS G. JOHNSON

Attorney General