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## Constitutionality of Appropriations for Poor Relief in Missouri

Wayne B. Wright

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## NOTES

CONSTITUTIONALITY OF APPROPRIATIONS FOR  
POOR RELIEF IN MISSOURI

The Constitution of Missouri, article IV, section 46 provides:

The General Assembly shall have no power to make any grant, or to authorize the making of any grant of public money or thing of value to any individual, association of individuals, municipal or other corporation whatsoever: *Provided*, That this shall not be so construed as to prevent the grant of aid in case of a public calamity.

During the 1939 session of the General Assembly, when an appropriation of state funds for direct grants to the indigent was discussed, the opinion was expressed that it would be unconstitutional under this section.<sup>1</sup> To indicate that the enacted bill was designed to come within the proviso, the statute restricted the use of the funds to "aid or relief in case of a public calamity."<sup>2</sup> If the present economic situation be found to be a public calamity, one difficulty will be obviated. There may be serious question, however, as to whether the present economic situation is a public calamity and *whether the funds can now be used*. If the section as a whole be found not to apply, it is believed that an appropriation for outdoor<sup>3</sup> poor relief will be constitutional in any event. The scope of this inquiry, therefore, will be to consider the constitutionality of an outdoor poor relief appropriation not restricted in terms to use in case of a public calamity.

The problem of public care and maintenance of the indigent is one not new to Anglo-American law, for it arose in England with the breakup of feudalism and the dissolution of the monasteries.<sup>4</sup> Responsibility for its solution was soon assumed by the state; and in 1601 parishes were given the power to tax for the support of the poor and to establish a system of work for the able-bodied, almshouses for the infirm, and apprenticeship for children. In the United States during the colonial period, relief was given the poor in their own homes; but later the institutional system was established in some states around the county poor farm, in others around state institutions. In Missouri from the advent of government under the present Constitution, the duty

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1. Editorial, St. Louis Post-Dispatch, Aug. 13, 1939.

2. Mo. Laws of 1939, 97.

3. I. e., relief not administered in state institutions.

4. Pipkin, "Poor Laws," 12 Ency. of Social Sciences (1934) 230.

of supporting the poor has been delegated to the county governments.<sup>5</sup> This method, however, has in Missouri and in some other states, broken down under the strain of the unemployment situation of the past decade, and state governments have found themselves constrained to appropriate funds principally to care for those who either because of physical disabilities or other reasons were unable to qualify for federal work relief assistance.<sup>6</sup>

In so doing legislators have found themselves faced in many states with constitutional restrictions on the use of public funds and with limitations on the state's authority to incur debts. In some states amendments to these sections have been passed, narrowing their scope and expressly authorizing relief of the indigent.<sup>7</sup> In others appropriations have been made in the belief that they were not within the scope of restrictions.

To answer the question of whether they come within these restrictions, it will be well to consider first the history and purpose of the restrictions. They have roots in the period from 1840-1890,<sup>8</sup> in the advent of the railroads and the increase of business enterprises. The great railroads found in this period such a problem of financing their operations that they were forced to turn to the state and local governments for working capital. Promises of large dividends and competition among towns for railroad facilities so influenced public opinion that state legislatures were forced to authorize towns to lend their credit heavily in aid of railroad and other enterprises.<sup>9</sup> "Government aid to railroads" was the cry of the day, and state and town were soon showering these private companies with subscriptions to stock, outright gifts of land and money, and gifts of state and municipal bonds.<sup>10</sup> Towns later found that dividends were scarce, that expected economic advantages were slow to bear fruit, and that their unwise policy was leading them toward bankruptcy.<sup>11</sup> Many states and municipalities facing bankruptcy or repudiation of their bonds did repudiate and projected

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5. R. S. Mo. (1929) secs. 961, 12950.

6. See *Commonwealth ex rel. Schnader v. Liveright* (1932) 308 Pa. 35, 161 Atl. 697, 714.

7. Fla. Const. art XIII, sec. 3; Okla. Const. art XXV; Tex. Const. art. III, sec. 51A.

8. *McAllister, Public Purpose in Taxation* (1930) 18 Cal. L. Rev. 137, 140.

9. *Dodd, State Government* (1922) 98.

10. *McAllister, supra* note 8, at 140.

11. By 1846 the state of New York found it had contracted debts which with interest amounted to \$38,000,000, \$6,000,000 of which had gone to finance *insolvent* railroads. See *People v. The Westchester County Nat'l Bank* (1921) 231 N. Y. 465, 132 N. E. 241, 243, 15 A. L. R. 1344.

the legal issue into the courts. It was out of this welter of bickering between town, railroad, and subsequent purchasers of bonds that the courts evolved the doctrine of public purpose as limiting the legality of governmental expenditures.

Prior to this time public funds had been spent without any judicial scrutiny of purpose.<sup>12</sup> In 1849 the Supreme Court of Pennsylvania expressed the prevailing view: "From the commencement of the government, our representative bodies have exerted the unchallenged power to levy taxes \* \* \* for every purpose deemed by them legitimate."<sup>13</sup> But the later development was not unheralded. In a case decided in 1837 involving the power of a town to divide a surplus "according to families," the Maine court had said:

No public exigency can require, that one citizen should place his estates in the public treasury for no purpose, but to be distributed to those, who have not contributed to accumulate them, and who are not dependent upon public charity.

And again:

Such a construction would be destructive of the security and safety of individual property; and subversive of individual industry and exertion. It would authorize a violation of what is asserted in our "declaration of rights" to be one of the natural rights of men, that of "acquiring, possessing and protecting property."<sup>14</sup>

Thereafter the doctrine of public purpose lay dormant until the first case questioning the validity of grants to railroads reached the courts in 1853. This was *Sharpless v. Mayor of Philadelphia*,<sup>15</sup> a suit to enjoin subscriptions by the city of Philadelphia to the stock of two railroads. The injunction was denied on the usual ground that no constitutional provision was violated, but Chief Justice Black went on to enunciate the public purpose doctrine<sup>16</sup> which was soon to take hold throughout the courts:

12. McAllister, *supra* note 8, at 140.

13. *Commonwealth v. M'Williams* (1849) 11 Pa. 61, 71.

14. *Hooper v. Emery* (1837) 14 Me. 375, 380. The money had been deposited with the town by the state of Maine to be used for the same purpose for which it had the power to tax. As the statute granting the town power to tax limited that right to certain enumerated purposes, the court held the town could not distribute the money. But immediately thereafter the state passed a statute (1837, c. 265) authorizing the towns to distribute the money per capita and the towns presumably did so without challenge in the courts. The above quoted alternative ground for decision seems to have been ignored by the legislature.

15. (1853) 21 Pa. 147.

16. *Id.* at 168.

Neither has the legislature any constitutional right to create a public debt, or to lay a tax, or to authorize any municipal corporation to do it, in order to raise funds for a mere *private* purpose. No such authority passed to the Assembly by the general grant of legislative power. This would not be legislation. Taxation is a mode of raising revenue for *public* purposes. When it is prostituted to objects in no way connected with the public interest or welfare, it ceases to be taxation, and becomes plunder.

Justice Black, however, held that aid to railroads was a public purpose. This view was accepted by the vast majority of courts, many of them reasoning that railroads had a public aspect derived from the fact that they had been given the power of eminent domain.<sup>17</sup> Justice Black's dictum was seized upon by the courts and in the next two decades made the basis of several decisions.<sup>18</sup> By the decision in 1874 of *Loan Ass'n v. Topeka*,<sup>19</sup> which held invalid as for a private purpose a municipal bond granted to aid a private industry, the Supreme Court of the United States, established the doctrine

that there can be no lawful tax which is not laid for a *public purpose*.

\* \* \* And in deciding whether, in the given case, the object for which the taxes are assessed falls upon the one side or the other of this line, they must be governed mainly by the course and usage of government, the objects for which taxes have been customarily and by long course of legislation levied, what objects or purposes have been considered necessary to the support and for the proper use of the government, whether State or municipal. Whatever lawfully pertains to this and is sanctioned by time and the acquiescence of the people may well be held to belong to the public use, and proper for the maintenance of good government, though this may not be the only criterion of rightful taxation.<sup>20</sup>

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17. Dillon, *Municipal Corporations* (5th ed. 1911) sec. 313. Contra: *Hanson v. Vernon* (1869) 27 Iowa 28; *People v. Salem* (1870) 20 Mich. 452; *Whiting v. The Sheboygan and Fond du Lac R. R.* (1870) 25 Wis. 167, 3 Am. Rep. 30.

18. *Allen v. Jay* (1872) 60 Me. 124 (statute authorizing town to lend money to manufacturer to locate a factory in the town held invalid); *Freeland v. Hastings* (1865) 92 Mass. 570 (appropriation to refund money paid for substitutes in Civil War held invalid); *Lowell v. Boston* (1873) 111 Mass. 454 (loans to individuals to rebuild following the disastrous Boston fire held invalid).

19. (U. S.) 20 Wall. 655.

20. *Id.* at 664, cited and adopted in *Jennings v. St. Louis* (1933) 332 Mo. 173, 58 S. W. (2d) 979, 87 A. L. R. 365.

In deciding whether a particular appropriation is for a public purpose, the court will balance the immediate private and the ultimate public gain; if the substantial inducement was the public welfare, the tax or appropriation will be upheld.<sup>21</sup>

Concurrently with this judicial development, the legislatures and people of many states were incorporating into their constitutions provisions of various sorts aimed directly at the practice of aiding private enterprises with public funds. These provisions took several forms: (1) limitation of all taxes to public purposes;<sup>22</sup> (2) limitation on amount<sup>23</sup> and purpose<sup>24</sup> of state and municipal indebtedness; and (3) prohibition of grants of public money and property to individuals, corporations and associations.<sup>25</sup> The first type, as we have seen, is only declarative of the judicially evolved rule. The second is the most common and has been held to restrict only the state indebtedness, limiting in no way expenditures of funds on hand.<sup>26</sup> But all three are aimed at the same evil and should be construed in the same light, that is, a type of grant which one provision does not restrict should not be restricted by the others.

The Constitution of Missouri<sup>27</sup> and those of many other states contain co-ordinate provisions bearing on poor relief in the light of which the grant of public funds restriction must be construed. These provisions indicate that the grant of funds restrictions were not meant to prohibit *all* relief of the poor. The Constitution of Missouri expressly authorizes the expenditure of state funds for the support of the state eleemosynary institutions. The question thereupon arising is, "Does the restriction prohibit direct grants to individuals, *i. e.*, outdoor relief, and allow relief only through the eleemosynary institutions?" The distinction between a grant of food or rent credits through a Social Security Commission and a grant of food and lodging through a state institution does not seem impressive, and it does not seem to have been recognized by the courts. In *State ex rel. Cryderman v. Weinrich*,<sup>28</sup> where an appropriation to buy seed grain for destitute farmers was upheld, the court said:

\* \* \* we come to the means to be employed. Are they a

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21. Opinion of the Justices (1937) 88 N. H. 484, 190 Atl. 425; and see *Patrick v. Riley* (1930) 209 Cal. 350, 287 Pac. 455, 458.

22. Mo. Const. art. X, sec. 3.

23. Mo. Const. art. IV, sec. 44.

24. Mo. Const. art. IV, sec. 45, 47.

25. Mo. Const. art. IV, sec. 46.

26. *State ex rel. Atwood v. Johnson* (1920) 170 Wis. 251, 176 N. W. 224.

27. Art. IV, sec. 43, par. 6.

28. (1918) 54 Mont. 390, 170 Pac. 942.

violation of section 1, art. 13 of the Constitution? Under any and every measure of poor relief known to the law and practice of this state, there is always a donation at least to some individual; this is as obnoxious to the section just referred to as a loan of credit or a grant; and it matters not that the donation is or may be food, fuel, or shelter, which cost money, instead of the money itself. \* \* \* They had and were designed to have no reference whatever to suitable measures, elsewhere commanded, for the relief of the poor.<sup>29</sup>

In Missouri the question arose in *State ex rel. City of St. Louis v. Seibert*,<sup>30</sup> where the issue was the validity of a grant to the St. Louis insane asylum, not a state institution. Argument was made that this was prohibited by the clause of the Constitution of Missouri above referred to, but in a 4 to 3 decision the court held that the ultimate grantees were the inmates, and disbursement through a municipal corporation did not invalidate it. The courts have thus construed these sections as restricting the use to which the funds were to be put and not the method of disbursement and have held them wholly inapplicable to poor relief, at least when some other provision authorizes it.

In general it has been held that the restrictions do not apply to disbursement statutes where: (1) the grant is to pay a moral obligation of the state, (2) it is for a public purpose, or (3) it is to carry out a governmental function. That a moral obligation is sufficient to sustain a grant is almost universally accepted. Moral obligations can be classified as benefits which are accepted and enjoyed by the state without rendering an adequate consideration<sup>31</sup> or as injuries which have been suffered at the hands of a government agent or in connection with the performance of a governmental duty.<sup>32</sup>

There is a difference of opinion on the question of whether a public purpose is sufficient to validate an appropriation. The affirmative view<sup>33</sup> is that the constitutional restrictions were a

29. 170 Pac. at 945.

30. (1893) 123 Mo. 424, 24 S. W. 750.

31. Soldiers' bonus acts have been sustained on the theory of moral debt. *State ex rel. Atwood v. Johnson* (1919) 170 Wis. 218, 175 N. W. 589, 7 A. L. R. 1617; Note (1920) 7 A. L. R. 1636, 1644. See also Mr. Justice Cardozo dissenting in *People v. The Westchester County Nat'l Bank* (1921) 231 N. Y. 465, 483, 132 N. E. 241, 15 A. L. R. 1344.

32. *State ex rel. Crow v. St. Louis* (1903) 174 Mo. 125, 73 S. W. 623, 61 L. R. A. 593; Board of Revenue and Road Comm'rs of Mobile County v. Puckett (1933) 227 Ala. 374, 149 So. 850; *Farrington v. State* (1923) 248 N. Y. 112, 161 N. E. 433; Note (1924) 28 A. L. R. 1100.

33. *Oakland v. Garrison* (1924) 194 Cal. 298, 228 Pac. 433; *Patrick v. Riley* (1930) 209 Cal. 350, 287 Pac. 455; in *Hagler v. Small* (1923) 307 Ill. 460, 138 N. E. 849, 855, it is said:

development contemporaneous with the evolution of the public purpose rule and were intended to achieve the same end. On this ground an issuance of bonds by the city of San Francisco and a grant of the proceeds for poor relief was upheld.<sup>34</sup> A constitutional provision prohibiting the giving or lending of credit of the state or any subdivision thereof in aid of an individual was held to be inapplicable to the expenditure of money in pursuance of a public purpose. Such a construction may be open to the objection that the restriction was obviously directed at some practices that have been held to be for public purposes. Grants to railroads have been held to be for a public purpose almost unanimously,<sup>35</sup> and yet they were the primary cause of the adoption of these restrictions.<sup>36</sup> Furthermore, many uses have been declared public purposes when the public good has been so remote as to leave no doubt that such appropriations, too, were intended to be restricted.<sup>37</sup> The restrictions were obviously aimed at the same evil as the public purpose doctrine. But in many instances, if not most, they were adopted independently and were aimed more directly at a specific evil, rather than being merely *co-extensive* with the judicially-evolved rule. It is submitted that these restrictions should be construed according to

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Is the purpose of this act public or private only? If it be the latter, it is within the prohibition of section 20 of article 4 of the Constitution; if the former, it is not. \* \* \*

It is contended, however, that the question whether or not the purpose is a public one is not the sole test as to whether this act provides for a proper use of the credit of the state; that public money cannot be paid to individuals through the use of the credit of the state, where there is no moral or legal obligation of the state to that individual. \* \* \* It may be observed that it is incongruous to say that such a public purpose may not be carried out to the benefit and welfare of the state, unless it rests upon some legal or moral obligation to an individual. If the purpose be public, it is so because it makes for the public weal. If such be the effect of it, the power to carry out such purpose does not rest on obligation to the individual, but is found in the general welfare provisions of the Constitution, and is based upon the principle that the state is empowered to do that which it ought to do for the public good. Such purpose is not primarily concerned with the interest of the individual, but with the welfare of the public as a whole.

34. *San Francisco v. Collins* (1932) 216 Cal. 187, 13 P. (2d) 912.

35. See *supra*, note 17.

36. See *supra*, notes 8-11.

37. Thus soldiers' bonus acts have been sustained on the ground that they promote patriotism and encourage the defense of the country in future conflicts. *Hagler v. Small* (1923) 307 Ill. 460, 138 N. E. 849; *State ex rel. Atwood v. Johnson* (1919) 170 Wis. 251, 176 N. W. 224. A grant to the widow of a deceased circuit judge of the salary for the remaining portion of his term of office has been declared valid because it induces good men to enter public service. *People ex rel. McDavid v. Barrett* (1939) 370 Ill. 478, 19 N. E. (2d) 356, 121 A. L. R. 1311.



the common meaning of their terms, always bearing in mind, however, the evils they were intended to prevent. If the public purpose test allows a type of appropriation which the provisions were intended to prevent, that test cannot be the one which was meant to be set up.

A New York court, passing upon a soldiers' bonus act, in *People v. Westchester Nat'l Bank*,<sup>38</sup> held a public purpose insufficient to take the expenditure out of the restriction. The court reasoned that public purpose was the test before the provisions were adopted and, therefore, that those provisions were meant to further restrict spending.<sup>39</sup>

The third exception made to the restriction—spending for a governmental duty or function—may be a more accurate test if construed more narrowly than public purpose. The Constitution of Pennsylvania prohibits all appropriations “for charitable, educational, or benevolent purposes to any person or community”<sup>40</sup> but, in *Commonwealth ex rel. Schnader v. Liveright*,<sup>41</sup> an appropriation of \$10,000,000 for direct relief was held valid, the court saying:

We again hold that the support of the poor—meaning such persons as have been understood as coming within that class ever since the organization of the government, persons who are without means of support \* \* \* is and always has been a direct charge on the body politic for its own preservation and protection; and that as such, in the light of an expense, stands exactly in the same position as the preservation of law and order. The expenditure of money by the state for such purposes is in performance of a governmental function or duty, and is not controlled by the constitutional provision.<sup>42</sup>

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38. (1921) 231 N. Y. 465, 132 N. E. 241, 15 A. L. R. 1344. The same result is reached in *Hill v. Rae* (1916) 52 Mont. 378, 158 Pac. 826, where a farm loan act was held invalid. Such acts have been generally held to be for a public purpose, *Cobb v. Parnell* (1931) 183 Ark. 429, 36 S. W. (2d) 388, but in the *Hill* case it was said, 158 Pac. at 831:

It will not suffice to say that, the general purposes of the act being to foster agriculture, and thus to promote the public welfare, such purpose is a public one; in the broad sense considered above it is so, and so likewise are all the purposes mentioned in section 35 of article 5; yet money for them may not be appropriated unless the specific objects are under the absolute control of the state.

39. That reasoning may not apply, however, in all jurisdictions. It is not clear that it is fully accurate in New York, for the lending credit clause was adopted in the constitution of 1846 (art. VII, sec. 9) before *Sharpless v. Mayor of Philadelphia* and the grant of funds clause by an amendment to that constitution in 1874 (art. VIII, sec. 10) before the public purpose test was fully accepted by the courts.

40. Pa. Const. art. III, sec. 18.

41. (1932) 308 Pa. 35, 161 Atl. 697.

42. 161 Atl. at 710.

In other words the court held that poor relief is not a "charitable" or "benevolent" purpose but a public duty, a function that must be exercised for the self-preservation of the government, and consequently one of its necessary expenses. The two tests of public purpose and governmental function may seem to be the same. A public purpose implies that the act is done for the general welfare of the state. Is it not a governmental function to do anything not prohibited that will promote the general welfare? The distinction would seem to be one between time honored functions of government, such as the preservation of law and order, and temporary and individual measures, such as granting a bonus to war veterans. Whether the constitutional restriction was meant to apply to public purposes, it was certainly never intended to relieve the state of an obligation assumed or of a function exercised for two and three-quarter centuries.

The Missouri Court is committed to the public purpose test although one or two cases do not seem to have followed it.<sup>43</sup> In *State ex rel. City of St. Louis v. Seibert*,<sup>44</sup> in which a grant of funds in aid of the insane was held valid as being for a public purpose, the court said:

It may be stated as a generally accepted principle of law that the legislature, with all its plenary powers, regardless of constitutional restrictions and limitations, has no power to raise money by taxation, or to appropriate it for purely private purposes; but to insure against an attempt to do so the constitution in express and positive terms deprives it of such power by section 46.<sup>45</sup>

In the more recent case of *State ex inf. McKittrick v. Southwestern Bell Telephone Co.*,<sup>46</sup> a statute granting to the telephone company the right to build telephone lines along, under, and over state highways was challenged. Although the grant was without

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43. By the vast majority of courts, pensions to policemen and firemen have been held to be for a public purpose and valid under grant of funds restrictions. *State ex rel. Haberlan v. Love* (1911) 89 Neb. 149, 131 N. W. 196; *Commonwealth ex rel. Philadelphia Police Pension Fund Ass'n v. Walton* (1897) 182 Pa. 373, 38 Atl. 790, 61 Am. St. Rep. 712. In Missouri, police pensions were held to violate those restrictions, but the court did not indicate whether it considered such appropriations not to be for a public purpose or the public purpose test insufficient. *State ex rel. Heaven v. Ziegenhein* (1898) 144 Mo. 283, 45 S. W. 1099 (statute authorizing towns to pension police); *State ex rel. Wander v. Kimmel* (1914) 256 Mo. 611, 165 S. W. 1067 (statute granting state funds to St. Louis Police Relief Ass'n, which was, however, an organization to which not all policemen belonged).

44. (1894) 123 Mo. 424, 24 S. W. 750.

45. 24 S. W. at 750.

46. (1936) 338 Mo. 617, 92 S. W. (2d) 612.

consideration the court upheld it, quoting and adopting the following passage from *Georgia v. Cincinnati Southern R. R.*:<sup>47</sup>

A conveyance in aid of a public purpose from which great benefits are expected is not within the class of evils the Constitution intended to prevent and in our opinion is not within the meaning of the word as it naturally should be understood.<sup>48</sup>

Missouri is also committed to the view that poor relief is a public purpose, and behind this proposition the weight of authority throughout all jurisdictions is overwhelming.<sup>49</sup> Thus, a city ordinance providing for the issuance of bonds to provide for poor relief has been upheld as for a public purpose.<sup>50</sup>

If the public purpose test should be deemed too all-inclusive and only those grants which are in performance of a governmental function be upheld, poor relief must certainly be held a governmental function. The view of *Commonwealth ex rel. Schnader v. Liveright*<sup>51</sup> is that poor relief is a necessary expense of government and a duty that must be fulfilled for the self-preservation of the government. The Kentucky court said of it:

That the care of the indigent poor is a purely public charity is not really questioned by the Attorney General. Christ commended it as a public privilege, whilst every civilized people upon the earth now regard it as a public duty. That great evasive question propounded in the adjutant of the first social relation of men, "Am I my brother's keeper?" is answered emphatically in the affirmative upon the consciences of this era of civilization, when speaking of the destitute and helpless. In this state, from its earliest history, it has been treated, as it had been in Virginia and England before us, as a public charge imposed as a matter

47. (1918) 248 U. S. 26.

48. *State ex inf. McKittrick v. Southwestern Bell Telephone Co.* (1936) 338 Mo. 617, 92 S. W. (2d) 612, 614.

49. *Woman's Relief Corps Home Ass'n v. Nye* (1908) 8 Cal. App. 527, 97 Pac. 208, 211; *San Francisco v. Collins* (1932) 216 Cal. 187, 13 P. (2d) 912; *Hager v. Kentucky Children's Home Society* (1904) 119 Ky. 235, 83 S. W. 605, 67 L. R. A. 815; Cooley, *Taxation* (2d ed. 1886) 124.

50. *Jennings v. St. Louis* (1933) 332 Mo. 173, 58 S. W. (2d) 979, 87 A. L. R. 365.

51. (1932) 308 Pa. 35, 161 Atl. 697, 710. In a concurring opinion, 161 Atl. at 715, it is said:

The greatest menace to the well-being and safety of the state is for it to have hundreds of thousands of its able-bodied and willing citizens suffering with their families, from hunger and lack of clothing and shelter because work is unattainable. An appropriation from a public treasury to relieve this suffering is no more a "charitable" appropriation than an appropriation made to suppress an uprising, repel an invasion, or to combat a pestilence.

of rightful exercise of governmental power upon the state, or such subdivisions of it as legislation might provide.<sup>52</sup>

Suffice it to say that no modern, civilized government has ever failed to recognize an obligation to support the poor and indigent.

The Missouri constitutional provision differs from the public funds section of most other states in only one material aspect, *viz.*, the addition of the proviso: "That this shall not be so construed as to prevent the grant of aid in case of public calamity." What is the significance of this addition? What does it indicate as to the intention of its framers as to the scope of the section? The entire section with the proviso was first adopted in the Constitution of 1875. In 1873 the landmark case of *Lowell v. Boston*<sup>53</sup> was decided in Massachusetts. It held that loans to those whose property and homes had been destroyed by the great fire which swept Boston in 1872 were not for a public purpose and hence were invalid. Generally grants and loans to aid individuals following a public calamity have been held invalid by the courts.<sup>54</sup> It is submitted that the Missouri proviso was added to avoid a construction based on the reasoning in *Lowell v. Boston* and the line of cases subsequently built upon it. The presence of the proviso, then, is entirely consistent with the view that the section sets up a public purpose test.

It may be contended, and indeed it is believed by many, that in the present industrial depression poor relief could be sustained under the "public calamity" proviso. That question would turn on whether the meaning of "public calamity" as used in the Constitution of Missouri properly includes widespread suffering caused by unemployment or only that caused by purely natural phenomena such as flood or fire. There is little authority to indicate the answer, for such a proviso appears in the public funds restriction of only the state of Texas,<sup>55</sup> and there are no adjudicated cases in which the courts have been called upon to construe it. Webster's Dictionary<sup>56</sup> defines *calamity* as any great misfortune or cause of loss or misery. Under this, the term would seem to include an industrial depression. The point would seem

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52. *Hager v. Children's Home Society* (1904) 119 Ky. 235, 83 S. W. 605, 606, 67 L. R. A. 815. Accord: *San Francisco v. Collins* (1932) 216 Cal. 187, 13 P. (2d) 912.

53. 111 Mass. 454, 15 Am. Rep. 39.

54. *Patty v. Colgan* (1893) 97 Cal. 251, 31 Pac. 1133, 18 L. R. A. 744 (*Tia Juana* flood); *Feldman & Co. v. Charleston* (1884) 23 S. C. 57, 55 Am. Rep. 6 (*Charleston* fire).

55. Tex. Const. art. III, sec. 51.

56. Webster's New International Dictionary (Merriam Co. ed. 1925).

debatable, but it is not within the scope of this paper to discuss the many factors which bear upon it. It may be said, however, that even should the grant of funds restriction be held applicable to poor relief, it could be strongly contended that it should be sustained in the present situation under the proviso.

Thus when article IV, section 46 of the Constitution of Missouri is considered in the light of its history and purpose, and when the tests used to ascertain the scope of such sections are applied, that section is found not to have been intended to prohibit direct poor relief. An appropriation for poor relief would be constitutional regardless of the existence of a public calamity; but if an economic depression and widespread unemployment be found to be a public calamity, poor relief can be brought within the proviso and sustained on that ground.

WAYNE B. WRIGHT.