

BLIND PENSION: In Re: Board of Managers of School for the Blind
unauthorized to pay expenses of teachers
for travel to School for Instruction.

April 17, 1946



Missouri School for the Blind
3815 Magnolia
St. Louis, Missouri

Attention: Mr. Robert H. Thompson, Superintendent

Gentlemen:

This will acknowledge receipt of your recent request for an opinion of this department. For sake of brevity we are restating your request. You state that the Board of Managers of the Missouri School for the Blind consider it highly essential that some twelve teachers, employed by said school, attend this summer, the American Association of Instructors of the Blind Meeting in Watertown, Massachusetts. That since the salaries of said teachers are much lower in comparison with the average salary of teachers similarly employed in the nation, said Board does not feel the teachers should be asked to bear the cost of this trip. You estimate that the cost per capita for the trip will amount to about seventy-five dollars (\$75.00) per teacher and you inquire if the Missouri School for the Blind can legally pay said costs out of its "operation fund" appropriated by the General Assembly for travel.

One of the cardinal rules of statutory construction is to determine the legislative intent. (See Artophone Corporation v. Coale, 133 S. W. (2d) 343, 345 Mo. 344.)

Said Board of Managers, being merely a creature of statute, is vested only with such power as may be granted by statute and the necessary implied powers to carry out those powers expressly granted. In Morris v. Farr, 114 S. W. (2d) 962, l.c. 964, 342 Mo. 179, the court, in holding that a County Court being a creature of statute, has only such powers as are granted by statute and when said court exceeds such authority such acts are void, said:

"(3) In Sturgeon v. Hampton, 88 Mo. 203, at page 213, the rule was early announced which has been generally recognized in this state as follows: 'The county courts are not

the general agents of the counties or of the state. Their powers are limited and defined by law. These statutes constitute their warrant of attorney. Whenever they step outside of and beyond this statutory authority their acts are void.' The court goes on to say that it should go far to uphold the acts of the county court when they are merely irregular, but such acts are not irregularities and are void when made without any warrant or authority in law."

Also in *State v. Wymore*, 132 S. W. (2d) 979, l.c. 987, 988, 345 Mo. 169, the court said:

"* * *In this situation the rule is stated as follows:

"The duties of a public office include those lying fairly within its scope, those essential to the accomplishment of the main purpose for which the office was created, and those which, although incidental and collateral, serve to promote the accomplishment of the principal purposes.' 46 C.J. Sec. 301, p. 1035.

"The rule respecting such powers is, that in addition to the powers expressly given by statute to an officer or a board of officers, he or it has, by implication, such additional powers, as are necessary for the due and efficient exercise of the powers expressly granted, or as may be fairly implied from the statute granting the express powers.' *Throop's Public Officers*, Sec. 542, p. 515."

Therefore, unless the statutes authorize said Board of Managers of said school to send such teachers to this meeting for instruction, in order to better qualify them to teach, no appropriation can be used to defray such expense. This is true for the reason it is well established that the General Assembly cannot legislate by an appropriation act. In *State v. Thompson*, 289 S. W. 338, l.c. 341, 316 Mo. 272, the Court said:

"* * *That the Legislature has the right

by general statute to fix salaries is beyond question, but has it the right to do so by means of an appropriation act? We think not.

"As has been observed in well-reasoned cases, if the practice of incorporating legislation of general character in an appropriation bill should be allowed, then all sorts of ill conceived, questionable, if not vicious, legislation could be proposed with the threat, too, that, if not assented to and passed, the appropriations would be defeated. The possibilities of such legislation and this court's condemnation thereof are well illustrated in the case of State ex rel. Tolerton v. Gordon, 236 Mo. 142, 139 S. W. 403, as well as the following cases from other states: State ex rel. v. Carr, 129 Ind. 44, 28 N. E. 88, 13 L. R. A. 177, 28 Am. St. Rep. 163; Com v. Gregg, 161 Pa. 582, 29 A. 297.

"Our Constitution (section 28, art. 4) is the one certain safeguard against such distracting possibilities and should be strictly followed.* * *"

An examination of the statutes disclose that under Section 10845, R. S. Mo. 1939, the Missouri School for the Blind is established as an educational institution for the State of Missouri. That under Section 10846, R. S. Mo. 1939, it provides for the creation of a Board of Managers to govern the school, said Board to be appointed by the Governor with the consent of the Senate. Under Section 10847, R. S. Mo. 1939, it authorizes said Board of Managers to elect a superintendent, teachers and officers for said school for the Blind, fix their term of office and fix the amount of compensation for services rendered. Furthermore Section 10864, R. S. Mo. 1939, vests in said Board of Managers the care and control of all property owned by said school and also vests the title in said property in said Board of Managers. Section 10864, supra, further provides that said Board of Managers shall not dispose of any real estate belonging to the school without an act of the Legislature.

We are unable to find any statute giving said Board of Managers express authority to incur the expense contemplated in your

request. There is no question but that such instruction would be highly beneficial, but, under the foregoing statutory provisions creating said school, vesting certain authority in the Board of Managers, we think it was not the intention of the Legislature that state funds should be expended by said Board of Managers for the purpose of training teachers employed by said Missouri School for the Blind. Said Board has authority to employ qualified teachers, also authority to fix their qualifications for employment and are not limited in any manner as to the amount of compensation they shall pay the teachers other than by the appropriation act, but certainly said Board has no authority to pay for such expenses in order that the teachers can better qualify for the position they now hold. If that was the Legislative intent it would have been an easy matter to have included such provision in clear and convincing terms in the statute.

In view of the fact that the Board of Managers are not authorized, under the statute, to send these teachers to this conference we consider it unnecessary to construe the appropriation to said School for the Blind as found in House Bill 361, which is somewhat ambiguous as to the provision relative to travel.

CONCLUSION

Therefore, it is the opinion of this department that the Board of Managers of the Missouri School for the Blind, being a creature of statute and not being vested with such authority to send teachers, employed by said school, to said meeting for instruction, that such expense cannot be incurred by said Board and paid out of appropriation under "OPERATION", as contained in House Bill 361, passed by the 63rd General Assembly.

Respectfully submitted,

AUBREY R. HAMMETT, JR.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

ARR:mw