

GIFTS:
INSTRUCTORS:
PRISONS:

A gift may be accepted for use within the penitentiary to further the recreation, music and fine arts program or to build a building to serve the needs for extra-curricular activities in the prison. The warden may permit visitors to instruct prisoners when the visiting instructor does not assume supervisory control of the prisoners even though the visiting instructor may be paid by some organization or individual in no way affiliated with the State of Missouri.

April 29, 1959



Honorable E. V. Nash, Warden
Missouri State Penitentiary
Jefferson City, Missouri

Dear Sir:

You recently asked our opinion and after conference with you the request was amended and is as follows:

"1. Can a gift of money on behalf of the Missouri State Penitentiary for men be accepted from an individual or organization for use within the penitentiary to further the recreational, music and fine arts program which is made available to the inmate population?

"2. Can a gift of money on behalf of the Missouri State Penitentiary for men be accepted from an individual or organization to be used in the construction of a building? The building would not be one employed in the housing, industry or general operational program of the institution, but one to serve the needs for extra-curricular activities such as church services, movies, boxing exhibitions, plays, concerts and similar activities.

"3. Can the Missouri State Penitentiary for Men accept the services of an instructor or supervisor, whose salary might be paid by an individual or organization? The organization or individual in no way affiliated with the State of Missouri or the state penitentiary."

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A search of the statutes reveals that the Department of Corrections and the Penitentiary are not specifically authorized to accept gifts but there is no prohibition in the statutes against accepting such gifts.

Section 33.550 of the Revised Statutes of Missouri, 1949, reads as follows:

"Whenever any devise, bequest, donation, gift or assignment of money, bonds or choses in action, or of any property, real, personal or mixed, shall be made or offered to be made to this state, the director of revenue shall be and is hereby authorized to receive and accept the same on such terms, conditions and limitations as may be agreed upon between the grantor, donor or assignor of said property and said official, so that the right and title to such property shall pass to and vest in this state, and all such property so vested in this state and the proceeds thereof when collected may be appropriated for educational purposes, or for such other purposes as the legislature may direct."

This provision authorizes the Director of Revenue to receive gifts on behalf of the State on such terms and conditions as he may agree on with the donor. We also call attention here to the Mississippi Valley Trust Company v. Ruhland, 222 S.W. 2d 750, 752 [1], which reads as follows:

"[1] The heirs say the right to take property by testamentary gift 'is not a natural right but a creature of law,' subject to the power of the sovereign to restrict or prohibit entirely. In re Rogers' Estate, Mo.Sup., 250 S.W. 576, 577 (1); State ex rel. McClintock v. Guinotte, 275 Mo. 298, 310 (1), 204 S.W. 806, 807 (1); 68 C.J. 503, § 122; 59 C.J. 164, § 276; 56 Am.Jur. 138, § 153; and contend that, in the absence of specific legislative authority, it is the policy of Missouri to deny to State institutions the capacity to accept gifts, including testamentary gifts, from private individuals. The trial court, in a well considered opinion, reached the opposite result; and we agree thereto."

On the basis of the above-cited and the statutory quotation we feel that the policy of the law in Missouri is well

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settled and allows the acceptance of gifts by state institutions. The gift is, of course, subject to the control of the Legislature to be used for the purpose designated.

The Legislature has given the Department of Corrections control over the Missouri State Penitentiary. See Section 216.010 and Section 216.020, RSMo Cum. Supp. 1957. Therefore, any building to be erected on prison grounds would have to meet with the approval of the Department of Corrections as does the prison program generally. The warden has authority to extend permission to individuals to visit the institution under such regulations as he may prescribe. See Section 216.435, RSMo Cum. Supp. 1957.

Now, for the answers to your specific questions. Question one reads as follows:

"1. Can a gift of money on behalf of the Missouri State Penitentiary for men be accepted from an individual or organization for use within the penitentiary to further the recreational, music and fine arts program which is made available to the inmate population?"

We feel that the Director of Revenue can accept such a gift to be used at the Penitentiary subject, of course, to legislative direction.

Question two reads as follows:

"2. Can a gift of money on behalf of the Missouri State Penitentiary for men be accepted from an individual or organization to be used in the construction of a building? The building would not be one employed in the housing, industry or general operational program of the institution, but one to serve the needs for extra-curricular activities such as church services, movies, boxing exhibitions, plays, concerts and similar activities."

We feel such a gift may be accepted by the Director of Revenue and used at the prison subject to legislative direction.

Question three reads as follows:

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"3. Can the Missouri State Penitentiary for Men accept the services of an instructor or supervisor, whose salary might be paid by an individual or organization? The organization or individual in no way affiliated with the State of Missouri or the state penitentiary."

From our conversation on this matter, it was determined that the instructor or supervisor in this case is to be a person skilled in an art or craft who does not actually have supervisory control of the prisoners but rather comes to the prison several times a week to supplement and assist prison instructors in offering certain courses. The prison employee is to be present at all times and in actual charge of the prisoners and the instructor complies with all prison regulations. We feel that under the statutes a person may be permitted to visit the penitentiary by the warden and conduct classes and assist prison personnel in the manner above described even though the instructor is not paid by the State and may be paid by an outside interest.

CONCLUSION

Therefore, it is our opinion that a gift may be accepted for use within the penitentiary to further the recreation, music and fine arts program or to build a building to serve the needs for extra-curricular activities in the prison. We further feel that the warden may permit visitors to instruct prisoners when the visiting instructor does not assume supervisory control of the prisoners even though the visiting instructor may be paid by some organization or individual in no way affiliated with the State of Missouri.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, James E. Conway.

Yours very truly,

JOHN M. DALTON
Attorney General

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