

APPROPRIATIONS: CONSTRUCTION OF APPROPRIATION ACT NOT IN CONFORMITY WITH  
A GENERAL STATUTE STATE CHILDREN'S BUREAU AND CHILDREN'S HOME

HB 649 Sec 25A. Laws 33

October 14, 1933.

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Mrs. W. W. Henderson, Director,  
Missouri State Children's Bureau and  
State Home for Children,  
Cerroilton, Missouri.

Dear Mrs. Henderson:

Your letter of August 8, 1933 has been received containing a  
request for an opinion as follows:

"A question has arisen as to the right we would have, under  
our appropriation, to allot a monthly portion for the main-  
tenance of the Trachoma Hospital at Holla, which has been  
requested in the sum of \$175.00 per month. In your decision  
on that matter, please also consider whether we can allot  
our funds as follows: (Page 79, 25-a, H. B. 649).

A. Personal Service:

Salary of Director (superintendent) of Children's Home  
and Child Welfare (Children's Bureau) @ \$2500 annually  
under R. S. 1929, Sec. 14099 (17 months) - - - - \$ 3,541.61

Salaries of office and field force, Home employees, Home  
physician; allotment for support of Trachoma Hospital  
(\$175.00); allotment for support of Eleemosynary Board  
headquarters (\$50.00);

Expenses in supervision and placing of children and other  
necessary Child Welfare work of the Children's Bureau (as  
set up by the Eleemosynary Board under Sec. 8565;)

Extra help; boarding special children outside the Home

Per 17 months - - - - - \$25,183.39  
Total appropriation (A) \$25,725.00

B. Operation:

All necessary operating expenses

Unless we can allot the field service travel expenses from  
the Personal Service schedule, we shall have a terribly over-heavy  
salary schedule with nothing for personnel to work with."

The 1933 appropriation act for the children's home and child welfare  
work is found at Laws of Missouri 1933 page 78 and is as follows:

"Section 25-A. Children's Home and Child Welfare Work.--  
There is hereby appropriated out of the State Treasury, charge-

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able to the state revenue fund, to the Board of Managers for the State Eleemosynary Institutions of the state, the sum of forty-five thousand dollars (\$45,000) for the pay of the officers and employees and for the support of the Children's Home, also for child welfare work, as follows:

## A. Personal Service:

Salaries of Director of Children's Home - - - - -	\$21,700
Other necessary employees (who shall also perform Necessary Child Welfare work) and for additional employees at Children's Home - - - - -	7,025

## B. Operation:

All necessary operating expenses - - - - -	<u>16,275</u>
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Total - - - - -	\$45,000"
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Of the three monthly allotments under this appropriation act no question arises about the second, i. e. the sum of \$7,025.00, or about the third, i. e. the sum of \$16,275.00, because under Revised Statutes of Missouri, 1929, Section 14099 relating to the State Home for Children it is provided that "the said board (which in this statute refers to the state board of charities and corrections by reference to Section 14096 which by Laws of 1933 page 189 was repealed and changed so that it now means the Board of Managers of the State Eleemosynary Institutions) shall determine the number of employees and the salary for each one, which shall not exceed the sum of \$1,500.00 per annum" and because under Revised Statutes of Missouri, Section 12931 it is provided that such board "shall in connection with this bureau (the bureau for children) appoint whatever agents are necessary for carrying out the provisions of this section, paying their salaries from funds at its disposal". Thus the sum of \$7,025.00 is to be used for paying employees and the sum of \$16,275 is to be used for operating expenses, and the only item in the appropriation act causing any difficulty is the first item, i. e. \$21,700.00. Furthermore, of this last mentioned item so much of it as is necessary to pay the salary of the director of the Children's Home at the rate of \$2,500.00 per year as provided for in Revised Statutes of Missouri Section 14099 can cause no question, so that the only part of the entire appropriation in question will be that part of the first item of \$21,700 which represents the difference between the amount necessary to pay the salary of the director at the rate of \$2,500.00 per year and the full amount of this first item of \$21,700.00. This difference hereinafter in this opinion will be called the surplus, and it is with this surplus that the rest of this opinion will deal.

I. SURPLUS CANNOT GO TO DIRECTOR.

(A) Under Section 14099 as above pointed out the salary of the director of the Children's Home is definitely fixed as a matter of substantive law.

(B) Such statutory salary could, of course, be changed by the Legislature but it was not changed by the appropriation act because such

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appropriation act as a matter of law is not held to amend a general statute unless by very explicit words it is provided that it shall be such an amendment. Thus it was said by Mr. Justice Story of the United States Supreme Court in dealing with this problem in *Minis v. United States*, 15 Peters 423, 10 L. ed. 791 (1841):

"It would be somewhat unusual to find engrafted upon an act making special and temporary appropriation, any provision which was to have a general and permanent application to all future appropriations. Nor ought such an intention on the part of the Legislature to be presumed, unless it is expressed in the most clear and positive terms, and where the language admits of no other reasonable interpretation." 15 Peters 445, 10 L. ed. 799.

To the same effect is *United States v. Jarvis, Davies*, Federal Case No. 15,468, 25 Fed. Cas. 587 (1846). So also in *Sutherland on Statutory Construction*, second edition, Section 347 it is said:

"Thus in the construction of a temporary appropriation act the presumption is that any special provisions of a general character therein contained are intended to be restricted in their operation to the subject matter of the act and are not permanent regulations, unless the intention of making them so is clearly expressed."

For these reasons the appropriation act did not change the salary of the director of the Children's Home and under such appropriation only a salary at the rate of \$2,500.00 per year could be paid to such director.

## II. SURPLUS CANNOT BE USED FOR OTHER PURPOSES.

(A) The surplus would be prevented from being paid out for any other purpose than that for which appropriated by the Constitution of Missouri Article X, Section 19, which provides in part as follows:

"No moneys shall ever be paid out of the treasury of this State, or any of the funds under its management, except in pursuance of an appropriation by law; \* \* \* \* \*  
"and every such law, making a new appropriation, or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object to which it is to be applied;"

(B) Under the Revised Statutes of Missouri of 1929, Section 8674, it is provided as follows:

"The board of managers shall not use any money appropriated by the state for any other purpose than that for which the same was appropriated. \* \* \* \*"

This statute relates to the board of managers of the State Eleemosynary Insti-

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tutions under the jurisdiction of which the Children's Home and Children's Bureau now are by virtue of the laws of 1933, page 189 as set out above, and by the terms of the appropriation act the money appropriated therein is appropriated to such board of managers so that Section 8674 is a specific prohibition against using the surplus for any other purpose than that for which appropriated.

(C) The courts of this state have announced a doctrine that appropriation acts are to be construed strictly so that there would be no room for a judicial construction of this appropriation act so as to allow the surplus to be used for any other purpose than that named. The Supreme Court of Missouri in the case of State ex rel Murray v. Brown, 141 Mo. 21, 41 S. W. 911 (1897) had before it a provision of the charter of the City of St. Louis providing as follows:

"No money shall be expended, nor shall any improvement be ordered involving an expenditure of money, except by ordinance, the provisions of which shall be specific and definite." (R. S. 1889, p. 2114, sec. 14).

An appropriation had been made in a fixed sum for "salaries of chief, captains, sergeants, patrolmen and detectives, namely, for chief, eight captains, seventy-one sergeants, six hundred and eighty-five patrolmen and sixteen detectives," and Relator, a retired policeman, was not of a class specifically named in such appropriation although he was entitled by law to a pension. Any surplus that might exist under such appropriation was taken care of by the following proviso of the ordinance:

"provided, that the surplus, if any, may be used in the payment of probationary specials, employed to fill the place of absent patrolmen."

From these quotations it is clear that the municipal appropriation in that case is analogous to the state appropriation in the case under consideration because St. Louis was under approximately the same statutory restrictions as the state in appropriating money. In such case the court in discussing the appropriation said:

"The funds set apart for the objects named in the ordinance are not exhausted. Relator's learned counsel argues that by the proviso quoted above the Board is invested with a discretion as to the mode of expending any surplus of funds beyond those needed for salaries of the active force. True! But only within the scope of the proviso! Relator's claim is not shown to fall within its terms. His claim is simply for salary as sergeant on the retired list, under the pension Acts. The pay-roll itself shows that on its face. The city has refused (or at least omitted) to make any appropriation for such claims, and hence the city auditor can not by mandamus be compelled to audit the claim."

Likewise announcing the same rule that appropriations are to be strictly con-

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strued are the cases of State ex rel Gevigen v. Bierkes, 214 Mo. 578, 113 S. W. 1077 (1908) and Myers v. Kansas City, 13 S. W. 2d, 900 (Supreme 1932).

Our conclusion is that the surplus as above defined in the item of \$21,700 of the appropriation act is not and cannot be available to the Board of Managers of the State Eleemosynary Institutions for any purpose and that the appropriation act is inoperative insofar as such surplus is concerned.

Because of our conclusions just set out it is our opinion that the sum of \$175.00 per month could not go to the Trachema Hospital at Bella from your appropriation and that the proposed allotment of your appropriation as set out in your request for opinion could not be made except insofar as it conforms to an allotment for salary of the director at \$2,500.00 per year, other compensation of employees in the amount of \$7,025.00 and operating expenses in the amount of \$16,275.00.

Yours very truly,

EDWARD H. MILLER

APPROVED:

ASSISTANT ATTORNEY GENERAL.

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ATTORNEY GENERAL.