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ELEMOSYNARY INSTITUTIONS:

Bliss and
Legislative power may not be delegated
to sub-board but must be performed by
board as provided by statute. X

August 1, 1933. 8-2

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Hon. W. Ed Jameson
President, Board of Managers
State Eleemosynary Institutions
Jefferson City, Missouri

My dear Mr. Jameson:

We wish to acknowledge your letter of July 6th, 1933,
which reads as follows:

"At a meeting of the Eleemosynary Board
in my office on June 30, the following
resolution was adopted:

'Doctor Bliss moved that if it is possible under the law, that the Eleemosynary Board, or the Governor, shall be able to appoint a sub-group to handle the entire problem of the Blind to report to and be responsible to this Board. Mr. Reason seconded the motion. Carried.'

I would be very glad if you would have your office render me an opinion as to whether or not we would have the authority to delegate the duties of this Board to a sub-board to be appointed either by the Governor or this Board, and oblige"

You asked the question as to whether or not the Board of Managers have authority to delegate duties imposed upon said board by statute to a sub-board. It is our opinion that the maxim, delegata potestas non potest delegari, meaning "delegated authority cannot be re-delegated" is applicable to

your situation. We hold to the conclusion that the duties and powers that involve a trust and confidence, judgment and discretion imposed upon said board shall not be delegated.

In the case of The Board of Commissioners of Excise of Delaware County, Respondent, v. Daniel W. Sackrider, Appellant, 35 N. Y. Reports, p. 154 l. c. 156 et seq., the court held:

" * * * It is not a case where the commissioners employ an attorney to bring particular suits, they themselves having first considered the question as to the propriety of the suits; but the attorney is left to act in the place of the board of commissioners and determine for them what suits shall be brought. The commissioners substitute the attorney in their place and stead, and undertake to depute to him all their authority, so far as they have authority, to determine any question as to the propriety of bringing suits against individuals for violation of the excise laws.

In my opinion, the commissioners of excise are clothed with something more than a mere naked authority; they are intrusted with an office which requires discretion, and are clothed with a trust which is to be exercised for the public good. Etc."

And further,

"The duties of the office involve a trust and confidence which they cannot assign to a stranger. (Cases cited)"

And further,

"The law having cast the duty upon the board of commissioners of excise in such a case, I do not think it can be or should be deputed to third persons. Etc. "

And in the case of Perry and Pinehout, overseers of the poor of the town of Saratoga Springs, vs. Tynen, Barbour's

Supreme Court Reports (N. Y.) 22, 137 l. c. 140, the court said:

"* * * In cases of the delegation of a public authority to three or more persons, the authority conferred may be exercised and performed by a majority of the whole number. If the act to be done by virtue of such public authority requires the exercise of discretion and judgment--in other words, if it is a judicial act--the persons to whom the authority is delegated must meet and confer together, and be present when the act is performed; or at least a majority must meet, confer, and be present, after all have been notified to attend. Etc."

See also, Commonwealth v. Armstrong, 4 Pa. County, 5 and 6; Ruggles et al. v. Collier et al., 43 Mo. 353 l. c. 365.

Thus, duties set out in the statutes to be performed by the members of the Board of Managers must be performed by them and shall not be delegated. Section 8891 R. S. Mo. 1929, further bears out this contention when it gives the right of the commission to appoint agents and employees to carry out the ministerial portions of said act. A part of said section reads as follows:

"It shall have power to appoint such agents and employes as it shall deem necessary and fix their compensation within the limits of the appropriation that shall be made by the General Assembly."

However, other duties such as are found in Sections 8896, 8897, 8891 and other sections that involve a trust and confidence, or which require judgment and discretion upon or by the members of the Board of Managers must be performed by such board and shall not be delegated to another by them.

Yours very truly,

James L. HornBostel
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK
Attorney-General.