

LABOR AND INDUSTRIAL INSPECTION: (1) Board of Permanent Seat of Government only required to furnish office space to Department of Labor and Industrial Inspection if same be available in State Capitol. (2) Rent for office space at Jefferson City not chargeable to appropriations made for Labor and Industrial Inspection.

12-10
December 7, 1934.

Mrs. Mary Edna Cruzen, Commissioner
Department of Labor and Industrial Inspection
Jefferson City, Missouri.

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Dear Mrs. Cruzen:

This department acknowledges your letter of November 27th, wherein you state as follows:

"I would like to have an opinion on the question of rent for suitable rooms for the Labor and Industrial Inspection Department during the period when the Legislature is in session.

"According to Section 13170 rooms must be furnished for the Labor and Industrial Department by the Permanent Seat of Government in the State Capitol. When we are required to move out for a period of time, who is held responsible for the payment of rent for the office rooms?"

Section 9156, R. S. Mo. 1929, provides in part as follows:

"It shall be unlawful during any session of the general assembly for any state official, board, commissioner, etc. ****, without the joint written consent of the presiding officers of the senate and house of representatives first had and obtained, to use, occupy, or otherwise usurp or hold any room, office or apartment in the capitol building, ****. And it shall be the duty of the commissioner of the permanent seat of government on or before the opening day

of each term or session of the general assembly to have all such committee rooms, offices and apartments cleared of all other occupants and open and ready for the use of the general assembly and of the several committees thereof, with all the furniture and fixtures belonging to said rooms restored thereto and in proper place therein. *****

By virtue of the above statute, your office would be moved by the Permanent Seat of Government.

Section 13170, R. S. Mo. 1929, provides in part as follows:

"The principal office of the commissioner of labor and industrial inspection shall be kept and maintained in Jefferson City Missouri, and it shall be the duty of the board of permanent seat of government to furnish suitable rooms therefor in the state capitol. *****"

You want to know who is held responsible for the payment of rent for the office rooms when you are required to move for the period that the Legislature is in session. To answer your inquiry, it calls for an interpretation of Section 13170, supra.

In the case of State v. Wurdeman, 295 Mo. 566, 246 S. W. 189, 1.c. 194, the Court said:

" **** Usually the use of the word 'shall' indicates a mandate, and unless there are other things in a statute, it indicates a mandatory statute. *****"

In this statute we have, in addition to the word "shall", the word "duty". It is defined in "Words and Phrases" Judicially Defined, Volume 3, p. 2384, thus:

"One's duty is what one is bound or under obligation to do."

And in the case of Taylor v. White,
(Texas) 113 S. W. 554, 1.c. 556, in the following man-
ner:

"A duty is but an obligation to perform
some act. *****"

In the case of Ash v. Chas. F. Noble
Oil & Gas Company, 96 Okla. 211, 223 Pac. 1.c. 179,
the Court, in defining the term "shall" said:

"'Shall' when used in connection with
the duty to be observed or performed
is used in an imperative sense, and
when a right or benefit depends upon
giving it a mandatory meaning it cannot
be given a permissive meaning. Clark
v. Patterson, 214 Ill. 539, 73 N. E.
806, 105 Am. St. Rep. 127; Bay State St.
Ry. Co. v. Woburn, 232 Mass. 201, 122
N. E. 268."

By virtue of Section 13170, R. S. Mo.
1929, supra, the Commissioner of Labor and Industrial
Inspection is given the right to suitable rooms in the
State Capitol, and it is made the duty or obligation
of the Board of Permanent Seat of Government to furnish
same. The term "shall" is used in connection with a
"duty" to be observed or performed and is therefore used
in an imperative sense, and cannot be given a permissive
meaning.

However, the Board of Permanent Seat
of Government, by virtue of Section 9156, R. S. Mo. 1929,
supra, must also give ear to the following language:

"And it shall be the duty of the Commis-
sioner of the Permanent Seat of Government
on or before the opening day of each term
or session of the general assembly to
have all such committee rooms, offices and
apartments cleared of all other occupants
and open and ready for the use of the general
assembly and of the several committees there-
of *****."

The term "shall" is also used here in
connection with a "duty" to be performed and therefore

is also used in an imperative sense.

Judge Walker held, in the case of Johnston v. Ragan, 265 Mo. 420, l.c. 435, 178 S. W. 159:

"Statutes are not to be construed so as to result in an absurdity or to impose unnecessary burdens."

We have seen that the Board of Permanent Seat of Government must provide suitable rooms in the State Capitol for the Department of Labor and Industrial Inspection, and are further directed to have all offices cleared for the General Assembly. To construe the term "shall" as being mandatory upon the Commissioner to furnish suitable rooms in the State Capitol when same are not available would result in an absurdity.

In the case of State v. Talty, 66 S. W. 361, l.c. 369, 166 Mo. 529, our Court in defining the term "shall" said:

"That the word 'shall' as generally used is mandatory may be conceded, but it is a cardinal rule that 'the intention of an act will prevail over the literal sense of its terms' (Suth. St. Const. Sec. 219), otherwise it might lead to absurd consequences, which could but be the result in this case if the statute be construed according to its strict letter."

We are, therefore, of the opinion that the intention of the Legislature was to make it mandatory upon the Board of Permanent Seat of Government to furnish suitable rooms for the Department of Labor and Industrial Inspection only if same were available. If rooms are not available, the duty of the Board is at an end for the duty only goes to furnishing of "suitable rooms therefore" in the State Capitol."

The Legislature made no provision in your appropriation for the paying of rent for office rooms. Laws of Missouri, 1933, page 80, sets out the funds appropriated to your department and it provides:

D. Operation:

General expenses, consisting of communication, printing and binding, travel, other general expense.....

Material and supplies: Consisting of stationery and office supplies..... \$7,590.00

Laws of Missouri, Extra Session (1933-34) page 10, sets out the funds appropriated to your Department and it provides:

D. Operation:

General expenses, consisting of communication, printing and binding, travel, other general expense..... \$5,000.00

If the Legislature intended rent to be paid for office rooms by the Department of Labor and Industrial Inspection it would have provided for such.

Article X, Section 19 of the Missouri Constitution provides that money is to be paid as appropriated and reads in part as follows:

"No money 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; *****"

The Court, in the case of State ex rel. Bybee v. Hackmann, 207 S. W. 64, l.c. 65; 276 Mo. 110, said:

"For it is fundamental that no officer in this State can pay out the money of the State, except pursuant to statutory authority authorizing and warranting such payment. Lamar Twp. v. Lamar, 261 Mo. 171, 169 S. W. 12, Ann. Cas. 1918 D. 740."

CONCLUSION.

In view of the above and foregoing, we are of the opinion that the Board of Permanent Seat of Government must furnish suitable rooms for the Department of Labor and Industrial Inspection if they are available, and if same cannot be obtained in the State Capitol the duty of the board is at an end.

The Legislature made no provision in your appropriation for the paying of rent for office rooms. If you wish to rent rooms in Jefferson City during the period the Legislature is in session, it will become a moral obligation upon the part of the Legislature to appropriate for the deficiency but there is no legal obligation imposing a duty upon them to do so

Respectfully submitted,

WM. ORR SAWYERS

Assistant Attorney-General.

APPROVED:

ROY MCKITTRICK
Attorney-General.

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