

PENITENTIARY:

Director's right and duties relative to
convicts used as servants in official residence.

5-21

May 14, 1934.



Hon. S. B. Hunter
Director
Department of Penal Institutions
Jefferson City, Missouri

Dear Mr. Hunter:

This is to acknowledge your letter of recent date as follows:

"Section 8337, Revised Statutes of Missouri, 1929, under the heading of 'Rights, powers privileges of Director', reads as follows:

'The director of penal institutions shall have and exercise all the rights, powers, and privileges with reference to the residence provided for the warden of the Missouri State Penitentiary, and the employment of prisoners therein, heretofore by law granted to and conferred upon said warden with reference thereto.'

We should be pleased to have you advise us as to what are the 'rights, powers, and privileges with reference to the residence provided for the warden of the Missouri State Penitentiary, and the employment of prisoners therein, heretofore by law granted to and conferred upon said warden with reference thereto'."

Before answering your request for an opinion we wish to preface same with a brief history of the management of the Penitentiary so as to afford a background to Section 8337, R. S. Mo. 1929:

In 1919 the law relative to management of the Penitentiary provided for a State Prison Board consisting of three members (Article 16, Chapter 111, Section 12407). No director was provided for in 1919 by statute. Article 20, Chapter 111, R. S. Mo. 1919, provided for the management, control and direction of the Penitentiary under a State Prison Board (Section 12466 R. S. Mo. 1919).

Section 12467, R. S. 1919, provided in part as follows:

"The warden * * * * * shall be appointed by said prison board * * * * * shall receive as full compensation for his services the sum of * * * * * per annum, including fuel and lights, and shall reside within the precincts of the penitentiary in a house provided for that purpose."

In 1921, Laws of Missouri, 1921, page 548, et seq., the Legislature provided and created a department to be known as the Department of Penal Institutions and provided that the penal institutions be under the control and management of a commission composed of five members. The Governor appointed the commissioners and designated one of same as director, and "the commissioner so designated shall by virtue thereof be chairman of said commission and reside and have his official residence in a house near the Missouri State Penitentiary now provided for and occupied by the warden thereof." This appears in the 1929 statute as Section 8317.

In 1921, present Section 8337, R. S. Mo. 1929, was enacted.

In 1933, Laws of Missouri, 1933, page 327, Sections 8316, 8317, 8318 and 8319, R. S. Mo. 1929, were repealed and four new sections enacted in lieu thereof to be known as the same sections.

Section 8316, Laws of Missouri, 1933, page 327, provides:

"* * * * * The Department of Penal Institutions shall be under the control and management of a Commission composed of three members, * * * * *."

Section 8317, Laws of Missouri, 1933, page 328, provides in part as follows:

"Immediately after the taking effect of this act it shall be the duty of the Governor * * * * *, to appoint three commissioners, * * * * *. The Governor shall designate one of said commissioners as director of penal institutions, and the commissioner so designated shall by virtue thereof be chairman of said commission and reside and have his official residence in the house near the Missouri state penitentiary. Etc."

So much, then, for the history of the management of the Penitentiary.

From the above it will be noted that prior to 1921 the Penitentiary was under the control of a State Prison Board and the warden was appointed by such board. The warden lived in a residence provided for that purpose and was given light and fuel therefor, in addition to his salary. Since 1921, and until 1933, the Penitentiary was under the control of commissioners, five in number; one of which number was designated as Director; the Director being entitled to live in the residence theretofore provided for the Warden. In 1933 the Legislature changed the number of commissioners from five to three; making no change, however, as to the Director so far as the official residence was concerned.

Section 8397, R. S. Mo. 1929, which was Section 12473 in the 1919 statute and was on the statute books when the warden's right to live in the official residence was divested from him, provides in part as follows:

"* * * * *; but nothing in this article shall be construed as forbidding the warden and deputy warden from using convicts as servants in their families, subject to such rules as may be prescribed by the board."

This statute is still in force and effect.

In 1919 when the warden resided in the official residence he was thus given the use of convicts as servants. Consequently, in 1921 when the director was permitted by the Legislature to occupy the residence, said director was likewise conferred the privilege enjoyed then by the warden, namely, that of the right to the use of prisoners in the residence, and Section 8337 R. S. Mo. 1929, was enacted to effect such arrangement.

Section 8337, R. S. Mo. 1929, provides for two things: first; use of the residence by the director, and, second: employment of prisoners therein. The first part of the statute reads:

"The director of the penal institutions shall have and exercise all the rights, powers, and privileges with reference to the residence provided for the warden of the Missouri State Penitentiary, "

And the second part reads:

"and the employment of prisoners therein, heretofore by law granted to and conferred upon said warden with reference thereto."

The "rights, powers, and privileges with reference to the residence" that the warden theretofore enjoyed of the residence was that of residing therein and having fuel and light furnished to him. In our opinion, the director now has those same rights, powers, and privileges. In addition thereto the appropriation act, Laws of Missouri, 1933, p. 103, provides:

"and other general expense; material and supplies, consisting of household supplies.
--Etc."

The warden formerly enjoyed the use of convicts as servants in the official residence as the board prescribed by rules and regulations (Section 8397), so that now the director would be entitled to the use of such as servants under the statute as pre-

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scribed by the rules and regulations of the commissioners. Of course, the commissioners may not prescribe any rule or regulation, neither may the director enjoy any right or privilege, that is contrary to the statutes (appropriation law) or the Constitution of the State of Missouri.

Yours very truly,

James L. HornBostel
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK
Attorney-General.

JLH:EG