

BOARD OF PENAL INSTITUTIONS:

Expense of return of escaped  
convicts payable from  
fund.

7-30

July 23, 1934



Department of Penal Institutions  
Jefferson City  
Missouri

Gentlemen:

Acknowledgment is hereby made of your letter of  
July 17, 1934, as follows:

"The funds for the apprehension of es-  
caped criminals have been exhausted, and  
a few escapes have been returned here  
and the expenses paid out of Petty Cash.  
First, this would soon exhaust the Petty  
Cash fund. In addition, the State Audi-  
tor suggests that I get an opinion from  
you to know if it is legal to make these  
payments out of the Petty Cash fund, or  
any other fund."

Section 8338 Revised Statutes Missouri 1929, in  
part provides:

"The state prison board shall, subject to  
law, have the exclusive government, regula-  
tion and control of the Missouri state  
penitentiary, the Missouri reformatory,  
the industrial home for girls, the in-  
dustrial home for negro girls and of all  
other penal or reformatory institutions  
hereafter created and of all persons who  
now are or who hereafter shall be legally  
sentenced to either of the institutions  
hereinabove mentioned or referred to and  
who shall be committed to the custody of  
said board, and said board shall make and  
enforce such by-laws, rules and regula-

tions as they from time to time deem necessary and proper in the management of all institutions or persons now or hereafter legally committed to said board, and shall be vested with and possessed of all other powers and duties necessary and proper to enable it to carry out fully and effectually all the purposes of this article.\* \* \* \*

Section 8437 Revised Statutes Missouri 1929 is as follows:

"Whenever any convict shall escape from the penitentiary, it shall be the duty of the board to take all proper measures for the apprehension of such convict; and for that purpose it shall offer to pay a reward, not exceeding one hundred dollars, if such convict be apprehended outside of Cole county, and twenty-five dollars if such convict be apprehended in Cole county, for the apprehension and delivery of such convict; such reward shall be chargeable to the state."

Defendants in criminal cases, where a penitentiary sentence has been imposed, are sentenced to the penitentiary there to be kept until the sentence is served or until the defendant is otherwise discharged from the penitentiary according to law. It is a matter of common knowledge that even under the most confident administration and strictest surveillance escapes from penal institutions will occur. It is as much the duty of the Board of Penal Institutions to see that such escaped convicts are returned to the penitentiary as it was to receive and keep them in the first instance. No provision is made in the law for the payment of the expense of the return of such escaped persons unless it can be found in Chapter 44 of the Revised Statutes of Missouri 1929.

Section 8437 above quoted, requires the Board to take all proper measures for the apprehension of escaped convicts. This authority necessarily implies the right

of the Board to incur such expenses as may be necessary to effect the apprehension of the escaped convict.

Referring to the State Penal Institutions, Section 8454 in part reads:

"All moneys derived from the sales of any articles manufactured in any of said industries in this article referred to, shall be collected by said board and paid into the treasury of the state to the credit of the following funds: \* \* \* \* \* Said board shall further determine what part of said receipts are due to labor and other profits in the operation of said penitentiary, and said amount shall be deposited in the 'earning fund'. \* \* \* \* \* The money deposited in the 'earning fund' shall be used by the prison board for the use of, support and maintenance of said prison, and such expenses as come under section 8408\* \* \* \* \*."

The Legislature, by Laws 1933, page 17, Section 43, appropriated out of the state treasury for emergency purposes only, the sum of three hundred thousand dollars (\$300,000.00) or so much thereof as might be necessary to meet any emergency in the operation, control and management of the state penal institutions, to be used only for the purpose of meeting unforeseen emergencies and only in such manner as the governor shall authorize and approve.

The Fifty Seventh General Assembly, Laws 1933, page 103,105, made a general appropriation for the expense of operating the state penitentiary, which appropriation bill provides, among other things, for the payment of general expense connected with the operation of the penitentiary. Since it is the duty of the Board of Penal Institutions to bring about the return to such institution of the prisoners who escape therefrom, we see no reason why the expense of the return of such prisoners could not be paid out of the appropriation for general expense above referred to, and such expense could also be properly paid out of the emergency appropriation of three hundred thousand dollars (\$300,000.00) appropriated for the operation, control and

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management of the state penitentiary, and such is our opinion.

Very truly yours,

GILBERT LAMB  
Assistant Attorney General

APPROVED:

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ROY McKITTRICK  
Attorney General.

GL:LC