

Relating to the distinction between "materials" mentioned in Class 'C' and that of Class 'D' in Laws 1933 at pp. 133 et seq. X  
Also H, B. No. 127, Special Session--Section 12T.

3-26

February 8, 1934.



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

Dear Mr. Jameson:

Your request for an opinion of this office dated January 30, 1934, is as follows:

"Permit me to call your attention to and ask your official opinion in re Paragraphs C and D of appropriation bill passed at the regular session of the Legislature fixing sums which might be expended by State Hospitals Nos. 1, 2, 3, and 4; Missouri State School at Marshall; and Missouri State Sanatorium at Mount Vernon as shown at pp. 133 et seq. Session Acts 1933, as follows:

'C. Repairs and Replacements:

Labor, material and supplies for repairing or replacing buildings, building equipment, operative equipment, and structures other than buildings

'D. OPERATION:

General expense, and material and supplies;

and of Sections C and D of appropriation act of Special Session of 1933, as same appear in Committee Substitute for House Bill No. 127, p. 16 et seq., which contain the same language, as to whether or not the word 'material' as used in Section C in each instance can be construed to mean the same as the word "material" in Section D thereof in so far as the purchase of supplies is for the betterment and upkeep of the buildings used and being a part of the several different eleemosynary institutions under the control and management of the Board of Managers State Eleemosynary Institutions."

I.

THE WORD 'MATERIAL' AS USED IN CLASS 'C' AND THE WORD 'MATERIAL' AS USED IN CLASS 'D' OF THE APPROPRIATION ACTS REFERRED TO IN YOUR REQUEST ARE NOT THE SAME, AS THEY REFER TO DIFFERENT SUPPLIES.

In arriving at a proper determination of your question we are first directed to the provisions of the Constitution of Missouri from which we quote. Section 43 of Article IV provides in part as follows:

"All revenue collected and moneys received by the State from any source whatsoever shall go into the treasury, and the General Assembly shall have no power to divert the same, or to permit money to be drawn from the treasury, except in pursuance of regular appropriations made by law.\* \* \* \*"

Also, Section 19 of Article <sup>X</sup>MO of the Constitution of Missouri 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;\* \* \* \*"

In the case of State ex rel. v. Gordon, 236 Mo. 142 l. c. 158, the Court in construing these Sections said:

"\* \* \*The language of the foregoing provisions of the Constitution is clear and explicit and forbids the payment of money from the State treasury 'received from any source whatsoever' or 'of any funds under its management' except in pursuance of regular appropriations made by law. Because of this constitutional inhibition we have no difficulty in deciding that in the absence of an appropriation made by the General Assembly for that purpose no funds could be lawfully paid out of the State treasury for the support and maintenance of the game department,\* \* \* \*"

In State ex rel. Publishing Co. v. Hackmann, 314 Mo. 33 l. c. 53, the Court said:

"It further appears that no money has been appropriated out of which relator's bill, as herein submitted, can be paid. And since under the provisions of Section 19, Article X of the Constitution, no money may be paid out of the State Treasury, except in pursuance of an appropriation by law the respondent was and is without authority to issue a warrant in payment of relator's claim. For it cannot be said that a claim is paid pursuant to an appropriation act where it is paid out of money specifically appropriated for a different purpose. \* \* \*

Laws of 1933, page 132-137, Section 1, provides by classifications A, B, C & D, the amount appropriated to each subdivision thereof for the purposes therein mentioned. The same is true with reference to Section 127, House Bill 127. It will readily be observed that a specific sum is appropriated for each class, and for a different purpose. The word "material" as used in Class 'C' is to designate any article or thing employed in repairing or replacing either buildings, building equipment, operative equipment and structures other than buildings. The word "material" as used in Class 'D' is used to designate supplies necessary in the operation of the institution. Funds appropriated for Class 'D' cannot be used for Class 'C' for the reason it could not be maintained that such a payment is made pursuant to an appropriation because specifically appropriated for a different purpose.

#### CONCLUSION.

In view of the provision of the State Constitution herein set out and the construction placed hereon by our Supreme Court, this Department holds that the Eleemosynary Board has no authority to use appropriations of one classification named in the appropriation act for a deficit existing in another classification, because that would constitute paying out money specifically appropriated for a separate and different purpose.

Yours very truly,

W. W. BARNES,  
Assistant Attorney General.

APPROVED

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ROY MCKITTRICK,  
Attorney General.