

STATE ELEEMOSYNARY INSTITUTIONS:

The board has implied power to accept a discount on bonds accepted in lieu of a judgment and sell the same.

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July 18, 1935.

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

Dear Sir:

Sometime ago this department was in receipt of a letter from you requesting certain information in regard to discounting certain bonds. Your letter is as follows:

"You will recall that suit was brought in St. Joseph against Buchanan County for their old account to State Hospital #2, St. Joseph and the Mo. State Sanatorium, Mt. Vernon. At that time we received judgment for the amount of the original bills in the neighborhood of \$41,000, but we received bonds for the amount of the original bill plus accumulated interest, in the amount of \$46,250.00.

"If we could get 92¢ on the dollar for these bonds it would just about equal the original amount of our bill, without interest.

"I would like to have your opinion as to our right to sell these bonds at an average of about 8% discount. I certainly think this is the wise thing to do. I have an offer today for \$5000.00 of scattered maturities on that basis."

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Your right and authority to discount the bonds eight per cent and thereby realize the cash from the sale of the same must be found expressly or impliedly in the statutory powers of the Board of Managers of the State Eleemosynary Institutions.

The statute referring to the demands and debts due the eleemosynary institutions is Section 8615, R. S. Mo. 1929, which is as follows:

"For all debts and demands whatsoever due any eleemosynary institution, and all damages for failure of contract, and for trespass and other wrongs to the institution or any property thereof, real or personal, actions in any court of competent jurisdiction may be maintained in the name of the board of managers of such institution, naming it. Interest shall be recovered on any and all sums due the institution from the time when the cause of action accrued. In actions for any indebtedness, or for any damages due the institution on account of any patient or inmate thereof, the account therefor, certified by the superintendent, with the seal of the institution attached, shall be prima facie evidence of the amount due."

Section 8636, R. S. Mo. 1929, empowers the county court to discount county warrants for the purpose of raising funds for the maintenance of county patients in institutions, the pertinent part of which is as follows:

"And for the purpose of raising the sum of money so provided for, the several county courts shall be and they are hereby expressly authorized and empowered to discount and sell their warrants, issued in such behalf, whenever it becomes necessary to raise said moneys so provided for. And state hospitals are hereby expressly prohibited from receiving any county warrant in payment of any such sum as may be due by this section."

Section 8567, R. S. Mo. 1929, refers to the penalty which may be incurred by officers of the institutions and board of managers with respect to incurring debts for which there is not at the time adequate appropriation, the pertinent part of which is as follows:

"Provided, that no such curator, manager, trustee or officer in control, or committeeman, as aforesaid, shall be so liable, as aforesaid, or be deemed guilty, as aforesaid, if at the time of incurring such debt he shall require the eyes and noses to be taken and recorded on the question of incurring such debt, and shall himself vote against incurring such debt: Provided further, that nothing herein shall prohibit such managers of any such institutions from incurring debts for the necessary support of such institutions from January first of the years the general assembly meets, until the appropriations for such institutions are made, when the funds of such institutions are exhausted."

Section 8561, R. S. Mo. 1929, places the control of the eleemosynary institutions in the hands of the board of managers and is as follows:

"The state eleemosynary institutions as defined in section 8560, of this article, shall hereafter be under the care, management and control of one board of managers consisting of six persons to be appointed by the governor, by and with the consent of the senate, not more than three of whom shall belong to the same political party."

It will be noted by the above section that the control and management of the eleemosynary institutions is completely under the jurisdiction of the board of managers.

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The right of the state or its officers to compromise claims and suits was discussed in the case of Commonwealth v. Southern Pac. Co., 120 S. W. 313, likewise in Railroad Company v. Anthony, 73 Mo. 431, in the following language:

"We understand the rule to be well established that pending litigation to recover on claims that are unliquidated and unsatisfied, the amount may be compromised by the state or any of its political subdivisions at any time before final judgment."

In the case of State ex rel. Bybee v. Hackmann, 276 Mo. 1. c. 116, the court lays down this rule:

"But it is also well settled, if not fundamental law, that whenever a duty or power is conferred by statute upon a public officer, all necessary authority to make such powers fully efficacious, or to render the performance of such duties, effectual, is conferred by implication."

#### CONCLUSION

There is no express authority provided by the statutes for the board of managers to discount the bonds in question in the amount of eight per cent. However, we are of the opinion that the statutes give the board of managers the implied power to make such discount if Hospital No. 2 and the Sanatorium at Mt. Vernon are in need of the funds and if in the judgment and discretion of the board it is of the opinion that the bid represents the true value of the bonds and is the best bid the board is able to obtain.

Yours very truly,

OLLIVER W. NOLEN,  
Assistant Attorney General.

APPROVED:

ROY McKITTRICK,  
Attorney General.