

BOARD OF HEALTH: Legislature appropriated money for Trachoma Hospital at Rolla for salaries of employes for "Prevention of Blindness"; appropriation act unless supported by a statute is a nullity.

November 27, 1936.



Honorable E. T. McGaugh, M. D.,
State Health Commissioner,
State Board of Health,
Jefferson City, Missouri.

Dear Dr. McGaugh:

This is to acknowledge your letter as follows:

"Dr. Smith of the Trachoma Hospital at Rolla has submitted, the Hospital payroll for the month of November, to this office.

"I would like your opinion as to whether or not these salaries can be legally paid out of State Funds. The payroll is as follows:

"Margaret Orten, Head Nurse	\$150.82
Dr. A. A. Drake, Relief Physician	15.00
Clara Standley, Field Nurse	104.17
Sam Winfrey, Cook, (partial payroll)	69.17"

To a final determination of the question presented two premises will have to be answered in the affirmative, namely, first, was there an appropriation made by the Legislature to pay salaries for employes of the Trachoma Hospital, and, second, if an appropriation, are the persons to whom the money is to be paid State employes? We do not know whether the persons listed in your letter are State employes or otherwise, consequently, we will write this opinion on the assumption that such persons are State

employees. If such are not State employes, then, of course, they would not be entitled to moneys from the State Treasury, if appropriated.

Article X, Section 19, of the Constitution of Missouri, in no uncertain terms provides:

"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; * * * * *"

Referring to Laws of Missouri, 1935, page 96, we find the following:

"There is hereby appropriated out of the state treasury, chargeable to the State revenue fund, the sum of Two Hundred Seven Thousand dollars (\$207,000.00) to be expended for the following purposes, in the amounts hereinafter stated:

"A. Personal Service:

* * * * *

"Prevention of Blindness:

Surgeon in charge of trachoma hospital, hospital nurses, cook, maid, clinician, janitor.

* * * * *

. \$165,000.00 "

The Legislature did appropriate moneys from the State revenue fund for personal services for hospital nurses and a cook. However, the appropriation of moneys By the Legislature for certain purposes without creating the employment therefor acts as a nullity. In other words, the Legislature could not, in view of Section 46 of Article IV of the Constitution, make

any grant of public moneys to any individual. Said Section 46 reads as follows:

"The General Assembly shall have no power to make any grant, or to authorize the making of any grant of public money or thing of value to any individual, association of individuals, municipal or other corporation whatsoever: Provided, That this shall not be so construed as to prevent the grant of aid in a case of public calamity."

Section 43, Article IV, Constitution of Missouri, also provides in part as follows:

"* * * All appropriations of money by the successive General Assemblies shall be made in the following order:

* * * * *

"Fifth, For the payment of the civil list. * * * * *"

Thus, in order to pay out moneys by virtue of the appropriation act, supra, said surgeon in charge of the Trachoma Hospital, hospital nurses, cook etc., must be State employes and hold their employment by virtue of a statute. An appropriation act cannot legislate and unless there is an office or employment created independent of the appropriation act, said appropriation act would be unconstitutional and violative of Section 46, Article IV of the Constitution.

The Supreme Court of Missouri, en banc, in the case of Kavanaugh v. Gordon, 244 Mo. 695, specifically pointed out that an appropriation to an individual, when no office was created by that or any other act, amounted to a gift to an individual and hence was void and violative of Section 46, Article IV. The court said (p. 721):

"Who hired him as an agent, on what terms and under what law? Some of the language indicates he was made independent of the commission. For instance, he reported to no one, he submitted his

own vouchers to the Auditor and to that extent, at least, was given a free rein. As to that, whatever his object, it is clear the lawmaker was careful not to make him an officer with the indicia of office. As heretofore pointed out, he gave him no term, no official name, created no office, no tenure, no duties, did not assume to appoint him by saying so, and, under the law as written, he was entitled to his money without performing any duties whatever. "Minus official orbit, he is a wandering star in Missouri governmental heavens. In that view of it, we can come to no conclusion except that he is dealt with as an individual. Hence the provision that \$7000 of the \$17,000 appropriated to the commission must be paid to him on his own vouchers, amounted in reason and law to an out-and-out gift to him as an individual of \$7000 of the State's money in violation of Sec. 46, Art. 4, of the Constitution, supra. (State ex rel. v. St. Louis, 216 Mo. 47; State v. Distilling Co., 237 Mo. 1. c. 106-7.) The appropriation fell squarely within the evils struck down by that constitutional interdiction, whereby the people set impassable bounds to legislative power. We have no call by construction to abate the vigor of that wise provision a whit."

When the Legislature by appropriation in 1935 permitted the expenditures of funds for personal service for "prevention of blindness" no doubt it assumed that there was a division created by the State Board of Health, and if such is the fact those people employed in that division would be entitled to compensation.

Section 9015, R. S. Mo. 1929, provides in part as follows:

"It shall be the duty of the state board of health to safeguard the health of the people in the state, counties, cities, villages, and towns.

It shall make a study of the causes and prevention of diseases and shall have full power and authority to make such rules and regulations as will prevent the entrance of infectious, contagious, communicable or dangerous diseases into the state. * * * * *

Section 9017, R. S. Mo. 1929, reads as follows:

"In addition to the divisions of vital statistics and laboratories already established, the board shall establish the following divisions: Preventable diseases, including tuberculosis, child hygiene, venereal diseases; and other divisions as it may deem necessary from time to time. The board shall formulate rules and regulations for the proper conduct of these divisions."

Section 9028, R. S. Mo. 1929, reads in part as follows:

"All rules and regulations authorized and made by the state board of health in accordance with this chapter shall supersede as to those matters to which this article relates, all local ordinances, rules and regulations and shall be observed throughout the state and enforced by all local and state health authorities. * * * * *"

From a reading of the above three statutes it is seen that the State Board of Health has unlimited power to safeguard the health of the people of the State of Missouri. Authority is given to the Board to make rules and regulations and to create divisions in the State Health Department in order to properly safeguard the health of the public. The rules and regulations made by the State Board of Health are paramount.

Nov. 27, 1936.

As it is the duty of the State Board of Health to establish divisions in order to properly safeguard the health of the people of the State of Missouri and as said Board has the authority we assume that the State Board of Health established a division known as the "Prevention of Blindness." Consequently, if such be the fact, statutory authority may be pointed to in order to support the appropriation act.

From the above and foregoing it is our opinion that if said persons, to whom salaries are to be paid, are State employes engaged in work for the State Board of Health for the "Prevention of Blindness" (rendering service to the State), such would be legal and could be paid from the appropriation act appropriated by the Legislature. Section 22, Laws of Missouri, 1935, pages 96-97. While the appropriation act mentions hospital nurses and the payroll shows one head nurse and a field nurse, yet if both are connected with the hospital as hospital nurses, such could be paid. The payroll shows a "Dr. A. A. Drake, Relief Physician \$15.00." We assume that the relief physician, as stated in the payroll, means a clinician. The cook is specifically authorized by the appropriation.

Yours very truly,

James L. HornBostel
Assistant Attorney-General

APPROVED:

Roy McKittrick

Attorney-General