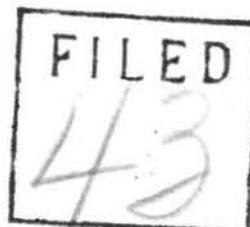


PRISON BOARD: Wrecking of buildings housing prison industries in order that new ones may be erected by the State Building Commission does not violate statutes relating to operation of prison industries.

June 3, 1937.

6-8

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



Dear Mr. Hunter:

We wish to acknowledge your request for an opinion wherein you state as follows:

"Enclosed I am handing you a copy of a letter that was addressed to me by Mr. R. L. Chapman, Superintendent of Industries, on March 5, and Feb. 18th, 1936. The Bi-Partisan Advisory Board was furnished with the information contained in this letter.

"We have recently been informed that the Bi-Partisan Advisory Board desires to destroy or wreck some of the buildings referred to in Mr. Chapman's letter, which are included in the Capital investment of the Revolving Fund.

"In view of the fact that the Revolving Fund was set up by the Legislature, and it being the responsibility of the Penal Board to keep it intact, it will be necessary that we be informed as to what our procedure shall be when a part of the Capital investment is being destroyed. You can readily understand the Penal Board does not wish to accept this responsibility without advice from you.

"It has been stated to us that this is merely a matter of bookkeeping, but I am of the opinion that there is more than

bookkeeping involved, and when the Capital investment is to be changed without getting value received, we must have some authority to do this that will protect us."

For the purpose of setting out the views of the Superintendent of Prison Industries, we quote herein a copy of his letter to you as Director under date of March 5, 1936:

"With further reference to our conversation relative to the contemplated wrecking, both partial and complete of Industrial buildings by the Bi-Partisan Advisory Board, please be advised that the net value of such buildings, after deductions for depreciation, etc., have been made at the close of the year 1935 are as follows, and the capital stock of the Industries, of which these buildings and this equipment are a part, will be affected in these amounts:

Building No. 16, Storage Warehouse	- - \$12,384.98
Garage Building, Adjacent to Bldg. #16	200.74
No. 2 Warehouse, - - - - -	14,919.78
Building No. 22, - - - - -	22,560.20
Building No. 4, - - - - -	5,214.40
Building No. 6, - - - - -	3,488.85
Building No. 21, - - - - -	2,966.67
Total Value	- - - - - \$61,735.62

This grand total of \$61,735.62 constitutes a part of the Industrial capital stock, and to my belief cannot be destroyed other than by an act of Legislation, due to the fact that the State Legislature set up the amount of capital stock for the Industries."

In the Session Acts of 1903, page 25, we find the Legislature created a Revolving Fund, which fund was to be used for the purpose of purchasing raw material and carrying on the business of manufacturing, handling and marketing binder twine. Section 5 of said Act reads:

"There is hereby appropriated out of any funds in the state treasury not otherwise appropriated the sum of one hundred and twenty-five thousand dollars (\$125,000), which shall be known as the 'Revolving Fund,' which fund, or so much thereof as may be necessary, shall be used only for the purpose of purchasing raw material required in the manufacture of twine and for the purpose of carrying on the business of manufacturing, handling and marketing the said twine until disposed of according to the provisions of this act; and the money in said 'Revolving Fund' shall be paid by the treasurer of the state upon warrants issued by the auditor of the state upon verified vouchers of the said warden."

Section 6 of said Act reads:

"All moneys derived from the sale of twine shall be collected by the said warden and paid into the treasury of the state to the credit of the 'revolving Fund' created by section 5 hereof; and it is hereby made the duty of the treasurer of the state to carry as a separate account upon the books of his office the said 'Revolving Fund,' which fund shall not be used, in whole or in part, for any purpose or purposes other than those named in section 5 hereof."

For a time this was the only prison industry operated by the State, but in the 1917 Session Acts we find provision made by the Legislature for additional prison industries and for the continuance and maintenance of the foregoing Revolving Fund.

The Legislature has at divers times made appropriations out of the general revenue for the prison industries, chargeable to the Revolving Fund, and this fund has been set up by the Prison Board as their capital structure.

The prison industries have apparently been managed and operated successfully for during the past years no moneys have been appropriated out of the general revenue fund by the State for the operation of the prison industries. Thus in such legislative sessions as 1931, 1933 and 1935 it has only been necessary to reappropriate funds out of the Revolving Fund when same had been collected and deposited to the credit of said Revolving Fund.

In the 1935 Session Acts, page 73, we find the following reference to funds for the prison industries:

"For the MISSOURI PENITENTIARY, chargeable to the MISSOURI PENITENTIARY REVOLVING Fund. -- For the purchase of raw materials, machinery or other equipment, or in the erection of buildings or in making other improvements in plants in connection with the industries carried on or to be carried on in said penitentiary or on the farms or land under the supervision of the State Prison Board, and in the manufacturing, handling and marketing of articles so produced, until disposed of in accordance with the provisions of Article 5, Chapter 44, of the Revised Statutes of Missouri, 1929, the sum of Eight Million Dollars (\$8,000,000.00) or so much thereof as may be necessary during the period beginning January first, 1935, and ending on the thirty-first day of December 1936; when the same shall have been collected and deposited to the credit of such said revolving fund."

By virtue of the above provision the Prison Board may spend up to \$8,000,000.00, which funds are to be derived from the sale of manufactured articles. The same, however, can be spent only when it has been collected and deposited by the Board from the sale of manufactured articles.

The prison industries are thus operated at a profit on funds appropriated to them by previous Legislatures out of the general revenue of the State.

The following statutes set out the scheme of operation of our present prison industries:

Section 8340, R. S. Mo. 1929, provides that the Prison Board may establish prison industries, in part, as follows:

"Said board shall, as soon as practicable, proceed to purchase, lease or otherwise provide suitable plants, machinery and equipment, and to purchase material, for the employment of all able-bodied persons in the Missouri state penitentiary, \* \* \* for such industries as in the opinion of the board will best occupy such persons, with the view of manufacturing, so far as may be practicable, such articles agreed upon by said board \* \* \*. Said board may purchase or lease upon reasonable terms such machinery as may be necessary for the manufacture and production of any other articles or products at a profit to the state, including shoes, clothing, floor mats, mops, rugs, carpets and other articles of furniture, such as beds and bedding of all kinds; also desks, chairs, tables, farm implements, fertilizer, brick or any other articles agreed upon by the board."

Section 8400, R. S. Mo. 1929, provides that the Board shall keep books and show, among other things, the profits or losses of each branch of manufacturers:

"The board shall attend to the financial concerns of the penitentiary and shall pay into the state treasury all moneys received by them on account of the institution, and shall keep in suitable books regular and complete accounts of all moneys received, and from what source, and shall have vouchers for all money disbursed. The books shall exhibit the profits or losses of each branch of manufacturers."

Section 8452, R. S. Mo. 1929, provides that the Board shall make such rules and regulations as it deems best for the operation of the factories:

"Said board shall purchase such raw material as may be required for manufacture of any article in any industry now or hereafter carried on by said board in the penitentiary, on any lands of the state or elsewhere, and shall employ such outside help as may be necessary, and shall be in charge of all articles manufactured by the state, and shall act as distributing agent for the manufacturing enterprises carried on in the institution, with authority to appoint agents or salesmen. It shall have charge of the factories and make such rules and regulations in the operation of the same as it deems best. The superintendent of industries, subject to the rules and regulations of the board, shall be the executive officer of the board, in charge of all industries now or hereafter created or operated by the board, \* \* \*."

Section 8453, R. S. Mo. 1929, provides for a Revolving Fund for the purchase of raw materials, machinery or other equipment, in part, as follows:

"The account or fund heretofore provided for by law, and known as the 'revolving fund,' shall continue to be maintained and known as the 'revolving fund,' which fund, or so much thereof as may be necessary, shall be used only for the purpose of purchasing raw material, machinery or other equipment or in the erection of buildings or making other improvements in plants in connection with the industries carried on or to be carried on in said penitentiary or on the farm or lands mentioned in section 8339 hereof or elsewhere; and in the manufacturing, handling and marketing of article so produced, until disposed of, according to the provisions of this article; and the money in said 'revolving fund' shall

be paid by the treasurer of the state upon warrants issued by the auditor of the state upon verified vouchers of said board."

Section 8454, R. S. Mo. 1929, provides how the moneys derived from sales of articles manufactured in the industries may be disbursed:

"All moneys derived from the sales or 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 ascertain and determine on the first of each month from the books, records and accounts kept showing the business operations of the penitentiary, the amount of money received each month due to the purchase of raw material for use and manufacture, and said sum when so determined shall be deposited in the revolving fund and 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;' and it is hereby made the duty of the treasurer of the state to carry on the books of his office as separate accounts the said 'revolving fund' and said 'earning fund.' Said 'revolving fund' shall not be used in whole or in part for any purpose or purposes other than those named in sections 8451, 8452, and 8453. 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, and the treasurer shall pay same upon the warrant of the state auditor which shall be drawn on the requisition of the board."

The Prison Board, as pointed out in the above statutes, is charged with the duty of establishing prison industries, with the view of keeping all able-bodied inmates employed in the penitentiary, and is further charged with the duty of keeping books showing the profits or losses of each branch of manufacturers.

Funds for the operation of such prison industries are obtained from a Revolving Fund set up by the Legislature, to which fund the latter has from time to time appropriated moneys out of the general revenue, although not within recent years because of the profitable operation of the prison industries. Further, Section 8454, supra, provides that each month that portion of the receipts derived from the sale of the manufactured article which represents raw material is paid back into the Revolving Fund, while that portion of the article which represents labor and other profits is deposited in the Earning Fund.

The argument is advanced that the Revolving Fund was set up by the Legislature, and that it is the responsibility of the Board to keep it intact, and further that if the buildings housing the prison industries which were built out of funds taken from the Revolving Fund are destroyed by the State Building Commission, the Revolving Fund can no longer be said to be intact, as contemplated by the Legislature, even though additional buildings will be erected by the Commission of even greater value than those destroyed.

The Revolving Fund can not and was not intended to remain intact in a strict sense of the word, as witness the language of Section 8454, supra, which provides that only that portion of the receipts derived from the sale of the manufactured article which represents raw material is paid back into the Revolving Fund. Not a word is said as to the latter fund receiving any profits. That portion of the article goes into the Earning Fund. The Prison Board, we understand, is only permitting surplus profits to go into the Earning Fund; otherwise it is evident that unless the Legislature made regular appropriations for the prison industries the Revolving Fund would eventually be spent and the Board be without funds to operate.

Article IV, Section 44d, of the Missouri Constitution necessarily authorizes the wrecking, in whole or in part, of such penal buildings as have outworn their purpose, and the erection of new ones if necessary, thus:

"Those institutions of the State of Missouri to which any of the proceeds of the sale of said bonds may be devoted are those eleemosynary and penal institutions whose buildings are in need of repair or remodeling or in need of being rebuilt or in need of additions or additional buildings."

On the basis of the foregoing constitutional provision, the Legislature created a State Building Commission

" \* \* \* for the purpose of repairing, remodeling or rebuilding, or repairing, remodeling and rebuilding all or any of the eleemosynary or penal institutions of this State, for building additions thereto and additional buildings wherever necessary, \* \* \*." (Laws of Missouri, 1933-1934, Extra Session, pp. 107-114.)

The buildings housing the prison industries are as much state buildings as any other building on the premises of the penitentiary, and the only essential difference is in the use the Legislature intended them to be put to.

We are therefore of the opinion that the Prison Board is charged only with spending the money appropriated for the use of the prison industries in the manner specified, and to operate these industries in as profitable a manner as possible, and further that the destruction of certain buildings housing prison industries so that new ones may be erected will not in any manner violate any statute relating to the operation of prison industries or to the expenditure of funds authorized for such purposes.

We are further of the opinion that the procedure to be followed by the Prison Board is merely a matter of bookkeeping and that the amount occasioned by the wrecking

Hon. Stephen B. Hunter

-10-

June 3, 1937.

of the buildings may be written off as a loss, and further that upon the erection of the new buildings same may be treated as an addition to the Revolving Fund or so designated capital structure of the prison industries.

Respectfully submitted,

MAX WASSERMAN,  
Assistant Attorney General.

APPROVED:

---

J. E. TAYLOR,  
(Acting) Attorney General.

MW:HR