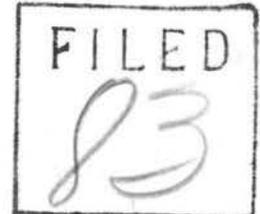


STATE BOARDS: Right of State Auditor to issue warrants for rent and stenographic help for the following Boards: Nurse Examiners, Optometry, Osteopathy, Barbers, Embalming, Chiropractic Examiners, Dental Examiners, Accountancy and Pharmacy.

December 31, 1937

16



Hon. Forrest Smith  
State Auditor  
Jefferson City, Missouri

Dear Sir:

This office is in receipt of your letter of November 30, 1937, in which you make the following request for an opinion:

"It has been the custom for many years for various Boards to employ a stenographer and pay rent and the appropriation bills have made provisions for the payment of these two items.

"I would like to have an opinion as to whether or not I can legally pay for a stenographer and rent out of the appropriations made to the following State Boards: Nurse Examiners, Optometry, Osteopathy, Barbers, Embalming, Chiropractic Examiners, Dental Examiners, Accountancy and Pharmacy."

In order for you to honor requests for payment for office rent and stenographers of the various Boards mentioned in your letter, two situations must exist, viz: (1) The particular Board requesting such payment must have the authority to rent offices and employ a stenographer, and (2) there must be a fund appropriated for such purposes, against which you can draw your warrants. If either of these situations does not exist, you cannot pay these items.

Since your request for an opinion refers and relates to a large number of Boards, all created by separate legislative acts, we shall look to some general principles of law applicable to the question at hand, and then proceed to discuss each separate Board in the light of the legislative acts creating and governing it.

If the Boards inquired about have the power to rent office rooms and employ stenographers, such power must be bottomed upon the statutes by which they were created and are governed, and such statutes must grant such power, either by express words or necessary implication. In discussing a very similar question, the court in the case of *State ex rel. Bybee v. Hackmann*, 276 Mo., l.c. 116, said:

"That question simply stated is this: Has the State Board of Equalization authority under the law to employ a stenographer at the expense of the State? If such Board of Equalization (hereinafter for brevity, called simply the board) has any such authority, this authority must be bottomed on some statute. For it is fundamental that no officer in this State can pay out the money of the State except pursuant to statutory authority authorizing and warranting such payment. (*Lamar Twp. v. Lamar*, 261 Mo. 171.) 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. (*Hannibal, etc., Railroad v. Marion Co.*, 36 Mo. 303; *Walker v. Linn Co.*, 72 Mo. 650; *Sheidley v. Lynch*, 95 Mo. 487.) So much being true it is urged that since the statute which defines the duties of the board provides that it may 'take all evidence it may deem necessary,' it follows by necessary implication that a stenographer may be employed to take and transcribe the evidence which the board deems necessary to be taken. We think this contention must be sustained."

Again in the case of State ex rel. Bradshaw v. Hackmann, 276 Mo., l.c. 607, the court, in passing on a similar question, quoted with approval a portion of the foregoing paragraph from the Bybee case, supra, and added:

"Under this rule we perforce must look to the statutes which created the office of Warehouse Commissioner and which prescribe his duties for authority to make our writ peremptory. If we find no such authority, either express, or which arises from such necessary implication as is above defined, it is manifest that we are without power to compel respondent to audit relator's expense account, for expenses incurred by him in going to and returning from Washington."

Likewise, in the case of In Re Sanford, 236 Mo., l.c. 692, the court reiterated rules of construction of statutes which will serve us in analyzing the statutes relating to the subject at hand in the following language:

"(c). There is a familiar rule of statutory construction which fits this case like a glove fits the hand, namely, That when a power is given by statute, everything necessary to make it effectual or requisite to attain the end, is necessarily implied. (Citing authorities).

"It is also a well settled rule of construction, that where a statute contains grants of power, it is to be construed so as to include the authority to do all things necessary to accomplish the object of the grant. (Citing authorities)."

In line with the foregoing rules, the court held in State ex rel. v. Speer, 284 Mo. 45, that where a county is vested by express grant with power to incur an indebtedness to erect a courthouse, such express grant of power by

implication embraces the authority to purchase a site for the building out of the proceeds of such indebtedness; and in the case of *Hudgins v. Consolidated School District*, 312 Mo. 1, the court held that where by express grant a school district, after necessary vote of the people, has the right to erect a school building, it has by necessary implication the right to furnish such school building, since the object of the express grant, to-wit, the erection of a new building, would be defeated if the district could not furnish and equip the building.

The foregoing rules apply more particularly to the first phase of our problem, viz, the determination of whether the particular Boards have power to rent office rooms and employ stenographers.

Approaching the second phase of our problem, viz, whether there has been an appropriation for payment of the particular items inquired about, we must start with the premise that an appropriation by the legislature is necessary before any expenditure can be made of the funds created for these particular Boards. *State ex rel. Kessler v. Hackmann*, 304 Mo. 453.

The rule as to when a claim against the State should be paid was laid down in the case of *State ex rel. Buder v. Hackmann*, 305 Mo., l.c. 351, wherein it was said:

"Before the State can be held liable for the payment of a fee or expense incurred in its behalf, the person or officer claiming such fee or expense must be able to point out the law authorizing such payment."

Appropriation laws are to be construed by the same rules as other legislation. The rule has been stated thus in 59 C.J., para. 401, pages 262-263:

"An appropriation law is to be construed under and by the same rules as other legislation. Where the intention of the legislature is plain and obvious, there is no room for

judicial construction of an appropriation. They are to be construed without liberality towards those who claim their benefits; but are not to be construed so strictly as to defeat their manifest objects. The language is to be presumed to have been used in its natural and ordinary meaning, and not to be given a forced and unnatural construction."

Article X, Section 19, of the Constitution of Missouri, after providing that expenditures can be made only after appropriation by law, provides as follows:

"and every such law, making a new appropriation, or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such sum or object."

In the case of State ex rel. Buder v. Hackmann, supra, the court had before it the question of whether the assessor should be allowed clerk hire, and the only basis for the claim for such allowance was a statute which provided that the assessor should be allowed his necessary expenses. In denying the claim for clerk hire, the court (l.c. 351) said:

"The words 'he and his deputies shall be entitled to receive their actual necessary expenses incurred in the performance of their duties,' fall far short of constituting clear and satisfactory authority for the payment by the State of clerk hire for assessors."

It must be borne in mind that even though the appropriation acts may in some instances indicate the legislature had in mind some of the expenditures inquired about, yet the language of an appropriation act is not conclusive on the courts as to the power of the legislature to

to appropriate money. State ex rel. Bradshaw v. Hackmann, supra,

Again in the Bradshaw case, supra, the court, after discussing what might be impliedly necessary for the officer under discussion to do in the discharge of his duties, (l.c. 611) said:

"If so it be that the crying exigencies brought about by a World War unforeseen and undreamed of when the act in question was passed had so altered national and domestic conditions when the trips in question were made as to make it absolutely necessary and praiseworthy for the relator to incur the expense in controversy in the first and second counts, we are yet forced, however much the situation may appeal to our personal sympathies, to relegate this phase of the case to the Legislature. Our duty in the premises is done when we are unable to lay our finger on any existing statute which, when construed under the rules laid down, supra, will justify us in adjudging payment."

From the above authorities, we conclude that the Boards inquired about do not have the power to rent office rooms or employ stenographers, unless the statutes creating them and governing them grant such power either by express language or by necessary implication, and that such powers, if not expressly granted, cannot be implied unless it is evident from the language of the statutes that the proper exercising of the powers expressly granted would make certain other powers indispensable and a denial of such other powers (not expressly granted) would render ineffectual the powers expressly granted.

With the foregoing premises before us, we must now look to the statutes creating and governing each particular Board inquired about in order to answer your inquiry specifically.

BOARD OF NURSE EXAMINERS

The statutes creating this Board and governing its activities are found in Chapter 100, R.S. Missouri, 1929. From a careful reading of these statutes, we are unable to find where this Board is by express language directed, required or empowered to rent an office or to hire a stenographer. The next question is, is such power granted this Board by necessary implication? Section 13480 provides that the Board shall meet at such place as it may select, and Section 13481 provides that the Board shall meet twice each year to hold examinations for nurses at such times and places as it may determine. All the duties enjoined upon the Board by Sections 13482 and 13483 could be and probably are discharged at meetings of the Board, which by Sections 13480 and 13481, it may hold at any place and at anytime it may determine. Section 13484, which provides compensation of the Board, merely contemplates that the Board members will perform their duties at irregular times and in different places. None of the duties of the Board necessarily requires a permanent office.

The secretary is required to keep records and registers, make reports and perform all duties customarily incident to such office, and we may assume from reading these statutes that the work of the secretary is extensive.

From reading these statutes, however, we do not believe that it can be said that the objects for which the Board was created would be defeated or its express powers rendered ineffectual unless it could rent offices and employ a stenographer. To be sure, the work of the secretary would be facilitated, no doubt, by having the services of a stenographer at her command, but the legislature has imposed certain prescribed duties upon the secretary and it did not see fit to authorize the employment of a stenographer. Even though performance of the duties prescribed by the legislature for the secretary would work a hardship on her, it is not the province of the judicial branch of the government to read in the statutes what the legislature omitted therefrom. As was said in State ex rel. Buder v. Hackmann, supra, l.c. 351:

"The argument of hardship and that an officer should not be compelled to incur a financial loss, in performing the duties incident to his

office, cannot be considered by the courts in passing upon the rights of relator, as fixed by the statute. Failure to provide a salary or fee for a duty imposed upon an officer by law does not excuse his performance of such duty. (State ex rel. v. Brown, 146 Mo. l.c. 406.) It may be that an assessor actually sustains a financial loss in the performance of his duties under our State Income Tax Law. But such fact is for consideration by the Legislature, and not by the courts."

Therefore, we find no authority in the statute for this Board to rent office room nor do we find any appropriation for rent. There is an appropriation for "general expenses" of this Board, but the constitutional provision above quoted requires appropriation acts to distinctly specify the objects for which the appropriation is made. While the term "general expenses" is rather broad and would include numerous items of expense, which naturally fall under that term if those items were authorized to be incurred by the Board, yet we do not think this term can include office rent in the light of the statutes governing this Board.

Reference to Section 6, page 92, Laws of 1937, of the appropriation act for this Board shows that an item was included for salary of a stenographer, but as heretofore stated, the statutes creating and governing this Board do not authorize the employment of a stenographer. As shown by authorities above quoted, an appropriation act is not conclusive on the courts as to the power of the legislature to appropriate the money. In other words, we understand the rule to be that if the legislature has not granted the power to a Board to do a thing, the act of a subsequent legislature in setting aside a sum for the doing of that thing will not supply the power, otherwise lacking, to do the thing.

It should be observed, however, that this Board is required by statute to hold certain meetings at such places as it may choose, among which meetings are those to conduct examinations of applicants for license and to

hear charges against persons holding licenses. We think that where the law has specifically required the holding of such meetings, the Board by implication has the power to provide places for such meetings and, therefore, could rent rooms temporarily for such purposes. In this particular, we think the appropriation for general expenses would be sufficient to cover rent on rooms rented temporarily for the purpose of holding the meetings required by law.

#### CONCLUSION

From the foregoing reasoning, we must conclude that you cannot lawfully draw warrants against funds appropriated for the Board of Nurse Examiners to pay for rent for office rooms or for salary of a stenographer, but that you can lawfully draw warrants against such funds to pay for rooms or quarters temporarily rented for the purpose of holding the meetings required by Sections 13480, 13481, and 13482, R.S. Missouri, 1929.

BOARD OF OPTOMETRY

The statutes creating and governing this Board are found in Chapter 101, R.S. Missouri, 1929. There is no express power granted this Board to establish an office, and from reading this chapter we cannot conclude as a matter of law that the work required of this Board would be rendered ineffectual if it could not rent offices. Furthermore, there has been no appropriation made for payment of rent for offices of this Board.

By Section 13500, this Board is required to hold at least four meetings each year, one of which must be held in St. Louis and one in Kansas City. In view of the authorities heretofore cited and following the reasoning outlined in the discussion relative to the Board of Nurse Examiners, we must conclude that the Board of Optometry has the implied power to rent quarters temporarily for such meetings. Otherwise, the power conferred and duty enjoined upon the Board in this regard could not be exercised and performed.

While there is no specific appropriation for rent, yet there is an appropriation for "general expenses (Section 6, page 93, Laws of 1937)", and we think this appropriation sufficient to cover rent of temporary quarters engaged for the meetings of the Board.

It should also be observed that by Section 13498 this Board is granted power to "take testimony in all matters relating to its powers and duties", and by Section 13509, it is required to hold public hearings on various matters. In line with the authorities heretofore cited and especially the authority of the case of State ex rel. Bybee v. Hackmann, supra, we must conclude that this Board has the implied power to employ a stenographer whenever it is deemed necessary and proper by the Board to transcribe testimony in connection with the hearings held by the Board. Examination of the appropriation act for this Board shows that there is an item designated "salary of a stenographer", and in view of what we have said as to the power of the Board in this particular, we think this item of appropriation is sufficient to cover the salary for a temporary employment of a stenographer authorized as aforesaid.

CONCLUSION

In line with the authorities cited and by the same reasoning followed in the discussion relating to the Board of Nurse Examiners, it is the opinion of this department that you cannot legally draw warrants against the funds appropriated for the use of the State Board of Optometry to pay rent of office rooms nor for the salary of a regular stenographer, but that you can draw warrants against said funds to pay for rent of quarters temporarily engaged to hold meetings of the Board, allowed and required by Section 13500, R.S. Missouri, 1929, and that you can draw warrants against such funds to pay for services of a stenographer employed to take testimony at hearings held by the Board.

BOARD OF OSTEOPATHIC REGISTRATION  
AND EXAMINATION

The statutes governing this Board are found in Chapter 102, R.S. Missouri, 1929. By Section 13517, this Board is given blanket power to incur "all expenses proper and necessary in the opinion of said Board to discharge its duties under and to enforce the law". It would seem, therefore, that this Board under this broad grant of power would have the right to rent office rooms and to employ a stenographer.

Examination of the appropriation act for this Board (Section 21, page 100, Laws of 1937) shows that no specific appropriation has been made with which to pay rent. This section of the appropriation act does provide as follows:

"D. Operation:  
General expense: including communication, printing and binding, travel and other general expense and Material and Supplies: consisting of stationery and office supplies insurance and premiums on bonds. . . . . \$1,800.00"

In view of the broad powers granted this Board by Section 13517 to incur expense, we think the appropriation for "general expense" is sufficiently broad to cover rent. The said appropriation act specifically provides for the salary of a stenographer.

CONCLUSION

It is, therefore, the opinion of this department that you can issue warrants against the funds appropriated for the use of the Board of Osteopathic Registration and Examination to pay rent and to pay the salary of a stenographer.

BOARD OF BARBER EXAMINERS

The statutes governing this Board are found in Chapter 103, R.S. Missouri, 1929. Section 13524, as amended (Laws of 1935, page 191) specifically empowers this Board to establish headquarters at such place in the State as it may choose and to employ a stenographer whose salary is limited to \$100.00 per month. Section 13525 directs the State Auditor to issue warrants monthly for the "payment of the salary, office and all other necessary expenses of said Board". Examination of the appropriation act relating to this Board (Section 2, page 90, Laws of 1937) reveals that there has been a definite appropriation for the salary of a stenographer. Said appropriation act also provides as follows:

"D. Operation

General expense; including communication, printing and binding, insurance and premium on bonds, traveling expenses and other general expense, and material and supplies consisting of stationery and office supplies . . . . . \$14,000.00."

In view of the fact that the statutes governing this Board direct it to establish headquarters at any place in the State it chooses and directs the State Auditor to issue warrants monthly for the "payment of salary, office and other necessary expenses of said Board", we are of the opinion that the appropriations above quoted is sufficiently broad to cover the item of rent.

CONCLUSION

It is, therefore, the opinion of this department that you can issue warrants against the funds appropriated for the use of the Board of Barber Examiners to pay rent and the salary of a stenographer, said salary not to exceed \$100.00 per month.

BOARD OF EMBALMERS

The statutes governing this Board are found in Chapter 104, R.S. Missouri, 1929. By these statutes, this Board is only required to meet once each year. There is nothing in said chapter (104) which would indicate that the Board is given power to rent offices or employ a stenographer. The only expenditures it is allowed to make are for expenses, salary and per diem of members of the Board (Section 13542), and after payment of these expenses, the surplus, if any, must be turned over to the State Treasurer to be credited to the Public School Fund.

CONCLUSION

It is, therefore, the opinion of this department that you cannot issue warrants against funds appropriated for the use of the Board of Embalmers to pay rent or salary of a stenographer.

BOARD OF CHIROPRACTIC EXAMINERS

The statutes governing this Board are found in Chapter 105, R.S. Missouri, 1929. There is no provision in these statutes which authorizes the Board to establish an office or employ a stenographer. In Section 13554 a reference is made to the principal office of the Board, but we do not think this amounts to a grant of power to the Board to establish an office.

However, this Board has power to meet at such places as it may select and must hold hearings on various matters and we must conclude that the Board could temporarily rent quarters for such meetings and hearings.

CONCLUSION

It is, therefore, the opinion of this department that you cannot issue warrants against the funds provided for the use of the Board of Chiropractic Examiners to pay for rent of offices, except rent on quarters temporarily engaged for meetings of the Board, and that you cannot issue warrants against such funds to pay for stenographic help.

BOARD OF DENTAL EXAMINERS

The statutes governing this Board are found in Chapter 106, R.S. Missouri, 1929. From a careful reading of these statutes, we do not find where this Board is empowered or required to establish an office, nor do we find that the appropriation act (Section 10, page 94-95, Laws of 1937) makes any provision for rent. However, this Board is authorized to meet at such places as it may select and is required to hold hearings on certain matters, and by the reasoning heretofore outlined in discussing other Boards, we must conclude that this Board could rent temporary quarters to hold its meetings and hearings.

Section 13568 requires testimony at certain hearings to be preserved and transcribed and Section 13573 authorizes the Board to employ and pay all necessary clerical services when, in their opinion, same is necessary. We think these two sections authorize this Board to employ a stenographer whenever they deem such employment necessary. Reference to the appropriation act relating to this Board shows that there is an item which includes extra stenographic help.

CONCLUSION

It is, therefore, the opinion of this department that you cannot issue warrants against the funds appropriated for the use of this Board to pay rent, except rent for quarters temporarily engaged, to hold meetings and hearings of the Board or members thereof, but that you can issue warrants against such funds to pay for stenographic help.

BOARD OF ACCOUNTANCY

The statutes governing this Board are found in Chapter 110, R.S. Missouri, 1929. There is nothing in these statutes authorizing this Board to rent offices and employ a stenographer. However, Section 13712 requires this Board to hold examinations at least once each year at such times and places as it may determine, and Section 13715 requires the Board to hold hearings before revoking or cancelling any certificate. By similar reasoning used in discussing other Boards, we conclude that this Board can temporarily rent quarters for the purpose of holding examinations and hearings, and we think the appropriation act (Section 49, page 116, Laws of 1937) under the heading of "general expense" would provide the funds to pay the rent on such temporary quarters.

CONCLUSION

It is, therefore, the opinion of this department that you cannot issue warrants against the funds appropriated for the use of the Board of Accountancy to pay rent or the salary of a stenographer, but that you can issue warrants against such funds to pay rent on temporary quarters engaged for the use of the Board in holding examinations and hearings.

BOARD OF PHARMACY

The statutes governing this Board are found in Chapter 94, R.S. Missouri, 1929. From a careful reading of these statutes, we cannot find any requirement for the Board to establish an office, nor can we say that the workings of the Board would be rendered ineffectual without such office. Some items in the appropriation act (Section 4, page 91, Laws of 1937) indicate the legislature of 1937 assumed that the Board would occupy an established office, but as pointed out heretofore, an appropriation act cannot supply power to a Board to do a thing where that power is not granted by the statutes creating and governing such Board. As is true in the cases of other Boards, this Board is required to hold examinations of applicants and hearings on questions involving licenses and we must conclude that this Board has the power to provide quarters for the use of such meetings. The item of a "general expense" in the appropriation act is sufficient to cover this irregular rent. Section 13151c, page 231, Laws of 1937, provides for clerks in the secretary's office. The appropriation act for this Board specifically provides for the salary of a clerk.

CONCLUSION

It is, therefore, the opinion of this department that you cannot issue warrants against the funds appropriated for the use of the Board of Pharmacy to pay rent, except rent on quarters temporarily provided for examinations and hearings conducted by the Board, but that you can issue warrants against such funds to pay for the salary of a clerk.

Respectfully submitted,

HARRY H. KAY  
Assistant Attorney General

APPROVED by:

J.E. TAYLOR  
(Acting) Attorney General

HHK:VAL