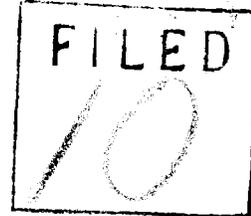


APPROPRIATION:
BOARD OF PHARMACY:
INVESTIGATING COMMITTEE:
EXPENSES OF, HOW PAID:

Expenses of investigating
committee of board of pharmacy
should be paid out of appropria-
tion to the Governor for that
purpose under Laws of Missouri,
1927, found at page 17.

June 2, 1938

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Mr. Charles R. Bohrer, Secretary
Missouri Board of Pharmacy,
West Plains, Missouri.

Dear Sir:

This is in response to yours of May 30, 1938, where-
in you request an opinion from this department as to the
manner of the payment of the expenses of a special investi-
gating committee appointed by your board, at the direction
of the Governor, which committee was appointed for the
purpose of making an investigation of charges of irregularities
which were alleged to have occurred during an examination
held by the board of pharmacy.

We note from the enclosures with your request that
the board received the following letter:

"After our conference today, you are
hereby requested to appoint an In-
vestigating Committee from the member-
ship of your Board of Pharmacy to
thoroughly investigate charges of
irregularities during an examination
recently held by your Board in St.
Louis.

You will please hold this investi-
gation at the earliest practicable
date, and make a complete written
report of your findings, together
with the Board's recommendations
as to what action should be taken
in the premises.

I have consulted the Attorney General regarding this matter, and he approves of this procedure."

Pursuant to that letter an investigating committee was appointed by your board and you are now seeking information as to how the expenses incurred by this committee in making the investigation may be paid.

Section 13151c, page 231, Laws of Missouri, 1937, provides in part as follows:

"* * * * All fees collected by the secretary for the examination of pharmacists and for the issuing of the permits authorized by this chapter, and for the renewal of certificates of registration and permits, and all other funds collected by the Secretary of the Board of Pharmacy under this chapter shall by him be paid into the State Treasury monthly, and shall be placed to the credit of a fund for the use of the Board of Pharmacy. The compensation and expenses of the Secretary, Assistant Secretaries, Clerks in office, and the members of the Board of Pharmacy, and all expenses incurred by the Board in carrying into execution the provisions of this Chapter, shall be paid out of said fund upon the warrant of the auditor of state, issued upon requisition, signed by the President and Secretary of the Board."

The investigation for which the committee was appointed was for the purpose of determining whether or not there had been irregularities in a pharmaceutical examination held by the board in St. Louis, and from a reading of the foregoing Section 13151c, supra, it does not appear that the expenses of such investigation can be taken from the earnings and funds of the board of pharmacy.

The 1937 appropriation to the board of pharmacy contains the following items:

"A. Personal Service:

Salaries, wages and per diem of the Board Members, secretary, attorney and clerk..... \$9,000.00

D. Operation:

General expense: including communication, printing and binding, transportation, travel and other general expense, material and supplies: including stationery and office supplies, light, heat, water and power supplies, insurance and premiums on bonds..... \$8,000.00."

It is evident from this appropriation act that the lawmakers did not provide for the payment of the expenses of the investigating committee to be paid out of the funds appropriated to the board of pharmacy.

Section 43, article IV of the Constitution of Missouri provides 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."* * *

In the case of State ex rel. Kessler v. Hackmann, 304 Mo. 458, the court said:

"On the other hand, this court has held that a fund, raised by an act for a special purpose, could not be paid out of the State Treasury except upon an appropriation by an act of the Legislature. (State ex rel. Fath v. Henderson, 160 Mo. 190,

l.c. 214; State ex rel. v. Gordon, 236 Mo. 142, l.c. 158.) In the case last cited the court had under consideration a fund for the support and maintenance of the Game Department. It was held that the creation of a special fund is not a continuing appropriation of the fund, or of any part of it, to pay accounts drawn against it. That the creation of the fund is one thing, and the appropriation of money to pay accounts against the fund is quite another thing. The language of the Constitution is unequivocal; it requires an appropriation before payment of money received by the State 'from any source whatsoever.' The money collected by the board is received by the State; it goes into the State Treasury. To make it more specific, the requirement that an appropriation by the Legislature will be necessary before money can be paid out of the treasury of the State, it is applied, not only to state funds, but to 'any of the funds under its management.'"

We have cited the constitutional provisions and the Hackmann case for the purpose of sustaining our views that the fees collected by the board of pharmacy can only be paid out under an appropriation bill passed by the legislature.

Investigation of irregularities in the conduct of an examination held by the board of pharmacy do not appear to have been authorized by chapter 94, R.S. Mo. 1929, which relates to the board of pharmacy, etc. As the board is created by statute, its powers and duties are limited thereby. There act does not authorize the board of pharmacy to expend any moneys for the investigations such as were held pursuant to the order from the Governor by his letter dated May 18, 1937.

At page 17, Laws of Missouri, 1937, we find that the Legislature made the following appropriation for the

biennial period of 1937 and 1938:

"A. Personal Service:

The pay of stenographers and special employees, investigators, accountants, attorneys and other employees whom the Governor may deem necessary to make investigations, and to procure information respecting the conduct or operation of any department, board, bureau, or commission or other agency of the State government, and to enforce any law, the enforcement of which is not otherwise provided for, at such compensation as may be agreed upon by the Governor and the persons who may be by him employed, to pay the salary of the Lieutenant-Governor when acting for the Governor, and to pay janitors; and for these purposes there is hereby appropriated the sum of 35,000.00"

It is quite apparent from the above appropriation act that the lawmakers intended that the expenses incurred in investigations of boards and bureaus be taken from this fund. It includes the charges for the investigating committee and stenographer's expenses and/or any other expenses in connection with the investigation which the Governor may deem necessary and proper.

CONCLUSION

It is, therefore, the opinion of this department that if the Governor deems that it was necessary and proper to employ the stenographers, and the investigating committee to make the investigation as directed by his letter of May 18, 1937, to the board, then the expense of such investigation after being approved by the Governor should be paid out of the appropriation was made by the legislature at page 17, Laws of Missouri, 1937, and hereinabove referred to.

We are returning to you all letters and copies which you enclosed with your request.

APPROVED:

Respectfully submitted,

J. E. TAYLOR
(Acting) Attorney General

TYRE W. BURTON
Assistant Attorney General

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