

APPROPRIATIONS: State Cancer Commission ^{may} can expend funds to
STATE CANCER : establish hospitalization for Cancer patients
HOSPITALS : prior to construction of State Cancer Hospitals.

February 21, 1938.

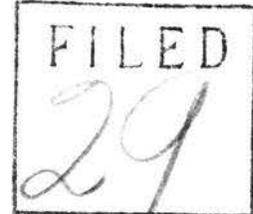
Dr. Ellis Fischel,
Chairman, State Cancer Commission,
400 Metropolitan Building,
St. Louis, Missouri.

Dear Dr. Fischel:

We hasten to acknowledge your request for
an opinion under date of February 18th:

"Possibly before this reaches you
Colonel Jameson has approached you
in reference to an opinion on the
interpretation of Committee Substi-
tute for Senate Bill No. 3. The
members of the Cancer Commission
have passed a resolution indicating
the willingness of the Cancer
Commission to assume the operation
of the tumor clinic at Fulton and
also the tumor clinic at St. Joseph,
now being operated by the Eleemosy-
nary Board, as soon as beds are made
available for hospitalizing patients.

"As you know, the last Legislature
appropriated \$100,000.00 for "Opera-
tion". This appropriation was cer-
tainly intended for the care of in-
digent cancer patients just as soon
as the Cancer Commission could provide
hospital facilities. Since it is
obviously impossible to erect a State
Cancer Hospital during the present
biennium, the Cancer Commission feels
that the intent of the legislators
could best be carried out by provid-
ing such hospitalization in the tumor
clinics already established at State
Hospital No. 1 and State Hospital No.
2. However, the Cancer Commission
feels it cannot go further in the
matter without a clear statement from
your office that it has the power to
do so."



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Senate Bill No. 3, to which you refer, was passed by the 59th General Assembly and provided for the establishment of a State Cancer Hospital for the treatment of cancer and allied diseases, (Laws of Missouri, 1937, page 495-500). Section 15 of said bill, page 500, provided that the General Assembly shall appropriate such sums necessary to establish and maintain the hospital, thus:

"The General Assembly shall appropriate out of the State Treasury such sums of money as is deemed necessary to establish and maintain an Institution to be known as the Missouri State Cancer Hospital."

The General Assembly made the following appropriation for the establishment and maintenance of the hospital, (Laws of Missouri, 1937, Section 145-J, page 166:

"There is hereby appropriated out of the State Treasury, chargeable to the general revenue fund, the sum of Six Hundred Thousand Dollars (\$600,000.00) for the building, equipment, and operation for one year of the Cancer Hospital for the State of Missouri in compliance with the provisions of committee substitute for Senate Bill No. 3, as follows:

"For construction of Cancer Hospital.....	\$400,000.00
For equipment of Cancer Hospital.....	100,000.00
For operation of Cancer Hospital for one year...	100,000.00
Total.....	\$600,000.00"

The primary rule in the construction of statutes is to give force and effect to the lawmaker's intent, (Meyering vs. Miller, 51 S. W. (2nd) 65, 330 Mo. 885).

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It is self evident that the legislature, in appropriating funds for the "Operation" of the hospital, was well aware of the fact that it would take some time to determine a proper site for the hospital, employ the necessary architect to design the building, and enter into contracts for its construction. To hold, that the legislature did not intend any part or all of the funds appropriated for operation of the hospital to be spent for the relief of those unfortunate people afflicted with cancer and allied diseases, until such time that the hospital was erected, would be to cast an unwarranted shadow on the high humanitarian purposes which it displayed by the very creation of the Act.

In the case of *Bowers vs. Missouri Mutual Association*, 62 S. W. (2d) (Mo.) 1058, l. c. 1063, the court said:

"Laws are passed in a spirit of justice and for the public welfare and should be so interpreted if possible as to further those ends and avoid giving them an unreasonable effect."

And in the case of *Hawkins vs. Smith*, 147 S. W. 1042, l. c. 1045, 242 Mo. 688, the court, in holding that in the construction of a statute it will not convict the legislature of doing a useless and unreasonable thing unless there is no other reasonable construction possible, said:

"It is consequently necessary to hold the right of action given to be transmissible in case of death, or we must convict the Legislature of doing a useless and reasonless thing in appending section 4 to the act of 1907. This kind of a construction is not put upon statutory provisions unless there is no other reasonable construction possible. *Strottman v. Railroad*, 211 Mo. l. c. 251, 252, 109 S. W. 769."

The only reasonable construction that can be advanced, is that the legislature intended the commission to begin immediately upon the Act taking effect, and to seek every means possible to provide hospital facilities for

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the care of those afflicted, until such time as a permanent hospital can be established for their care.

From the foregoing we are of the opinion that the State Cancer Commission ~~may~~ establish hospitalization for the care of indigent cancer patients in the tumor clinics already established, at State Hospitals Nos. 1 and 2 and spend such funds as are necessary out of the amount appropriated by the legislature under "Operation".

Respectfully submitted,

MAX WASSERMAN,
Assistant Attorney General.

APPROVED:

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

MW:LB