

APPROPRIATION : Traveling expenses of persons selected by
SOLDIERS MONUMENT: Governor to "care" for monument and graves
may be paid out of appropriation Laws of
1937, page 126.

April 6, 1938 4/9



Honorable Lloyd C. Stark
Governor of Missouri
Jefferson City, Missouri

Dear Governor:

This department is in receipt of your request
for an official opinion which reads as follows:

"Will you please give me your official
opinion regarding my authority under an
Act passed by the 1937 Legislature
found in the Laws of Missouri, 1937,
Section 69, page 126, which reads as
follows:

'Care of Monument in France and
care of Burial Places in Europe. -
There is hereby appropriated out
of the State Treasury, chargeable
to the State revenue fund, the
sum of Five Thousand (\$5,000.00)
Dollars for the care of the grounds
and monument erected in France in
commemoration of the brave deeds
of Missouri's heroic sons who lie
buried in the Republic of France,
and for the care of burial places
in Europe where the bodies of
sons and daughters of Missouri
who lost their lives during the
World Ware are buried. This expen-
diture shall be made under the
direction of the Governor.'

May I, under this Statute, appoint a
commission of three ex-service men -
one from the National Guard of Missouri,
and one from the membership of the State
Senate, and one from the membership of
the House of Representatives, to go to
France and other burial places in Europe
for the inspection of such burial places
and monuments for the purpose of making

proper provision for their care and maintenance, and may their actual expenses of carrying out these duties be paid from the above mentioned appropriation?"

In 1919 the Legislature enacted a law providing for the erection of a monument in France to the Missouri soldiers. Laws of Missouri 1919, page 77.

Laws of Missouri, 1937, Section 69, page 126, appropriates \$5,000.00 for the care of this monument and the graves.

The first question presented is whether the above appropriation is a valid one.

Article IV, Sections 46 and 47, of the Constitution of the State of Missouri provide that the General Assembly shall not make any grant of public money or thing of value to any individual, association of individuals, municipal or other corporations. However, it is well settled in Missouri that if the purpose for which the grant is made is a public one, then such appropriation is valid. *Farm Bureau v. Jasper County*, 315 Mo. 560. *State ex rel. Gilpin v. Smith*, 96 S. W. (2nd) 40. The attitude of the courts towards statutes such as this is declared by Judge Lamm in *Hale v. Stimson*, 198 Mo. 134, as follows:

"In a free State, sustained by no over-awing standing army, where its love must grow and its protection must rest, in the hearts of the people, patriotism should be nourished as a cardinal virtue of citizenship. The statutes and constitution of such a State must not be construed as ungrateful or unpatriotic."

Money appropriated for a monument to Missouri youths who died in the World War and for the care of the burial places is for a "public purpose," and is therefore a valid and legal appropriation.

The next question which presents itself is whether a committee or group may be sent over to France to inspect these graves and monument and such expense be paid out of the appropriation.

In State ex rel. Lamkin v. Hackmann, 204 S. W. 513, 275 Mo. 47, the Supreme Court of Missouri said:

"The authority to travel at the expense of the State, we concede, must be found in some statute, or arise by the most obvious implication from some statute, otherwise there is no obligation on the part of the State to pay the expenses incurred thereby."

However, as was pointed out in State ex rel. Bybee vs. Hackman, 276 Mo. 110:

"Whenever a duty or power is conferred by statute upon a public officer, all necessary authority to make such power fully efficacious or to render the performance of the duty effectual is conferred by implication."

We must, therefore look to the law itself to determine if this right is given. It will be noted that the statute provides for the "care of the grounds and monument" and for the "care of burial places."

In Emery v. Wheeler, 152 A. 624, 129 Me. 428, care is defined as:

"Responsibility, charge or oversight, watchful regard and attention."

It will be seen, therefore, when the Legislature appropriated money for the care of the monument in France and for the care of the burial places in Europe, it intended that there should be watchful regard and attention over such monument and graves. The burden of seeing that this "regard" and "care" is given the monument and graves is placed by the statute upon the governor. If therefore in order "to render the performance of the duty effectual" persons must be sent over to the situs of the monument and graves, then traveling expenses may be paid out of the appropriation.

As to the personnel and number of the group, we do not pass upon the question because as was pointed out in Commonwealth v. Gregg, 29 A 297, 161 Pa. 582, "what work there is to be done, and what clerical force

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is requisite to do it, is a question of detail, as to which, much must necessarily be left to the head of each department."

CONCLUSION

It is, therefore, the opinion of this department that under Laws of Missouri, 1937, page/26, the Governor may select persons to "care" for the monument in France to Missouri's war dead and also to "care" for the graves of Missouri soldiers and traveling expenses of such persons may be paid out of moneys appropriated by such law.

Yours very truly,

OLLIVER W. NOLEN
Assistant Attorney General

APPROVED:

ROY MCKITTRICK
Attorney General

AO'K:LB