

PARK BOARDS: Park Boards may not employ skilled help and pay same from Appropriation Act for repairs and replacements.

September 11, 1939

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Mr. I. T. Bode
Director of Parks
State Park Board
Jefferson City, Missouri

Dear Mr. Bode:

This Department acknowledges your request for an opinion under date of August 28th, in part, as follows:

"While the 1939 session of the State Legislature made more generous provisions for the payment of personal services than did the 1937 Legislature, we are still confronted with something of the same situation.

"It is clear to us that we can pay for some day labor from some of the items of appropriation other than personal services as the word "labor" is specifically included in some of these other items. In order to adequately care for the parks, it may be necessary that some salary items be charged to other parts of our present appropriation than the personal services appropriation. We have specifically in mind employees who would be employed in the development of parks, principally technical men and skilled.

workmen who would not come in a day labor class but who would work on a salary.

"Another possible item which we could not charge to the personal services account because of lack of funds would be the matter of the employment of a skilled pump mechanic to maintain our rather extensive system of wells which are scattered over the entire State.

Many of these pumps have become old and are beginning to need rather extensive repairs, and from the standpoint of cost we have about concluded that the cheapest procedure would be to employ an expert pump mechanic by the month who would travel from park to park and assume responsibility for the maintenance of our many pumps. If such a man is to be employed it would be better to have the employment by the month instead of day labor basis, and I am wondering if the salary of such a man can be charged to repairs and replacements item of our appropriation. Incidentally, should we employ a special pump man we would expect to use him for the repair and maintenance of our sewer systems, water systems and, in the event we could obtain a qualified man, we would use him for our electric and telephone systems or, in short, for any work which required the services of a skilled mechanic who was familiar with our various park structures.

"We can get through the present biennial period and charge no salaries to any item other than the personal services item. However, should we maintain as large a personnel as it appears desirable to maintain, it will be necessary that we charge some salaries to appropriations

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other than personal services.

"An opinion regarding this matter will be appreciated."

As we understand your letter you state that the appropriation given the State Park Board by the Sixtieth General Assembly for personal services is inadequate, and, therefore, you desire to be advised as to whether you may employ a technical and skilled workman, such as a skilled pump mechanic, by the month, and charge his salary to repairs and replacements.

59 C. J. Section 401, pages 262 to 263, discusses the rules for construction of appropriation laws:

"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. The whole bill is to be examined in arriving at the true intention of the parties. * * *"

The word "repair" is defined in Webster's Dictionary as meaning, "to restore to a sound or good state after decay, injury, dilapidation, or partial construction; to renew; to restore; to mend; as to repair a house, a road, a shoe, or a ship; to repair a shattered fortune." *Berry v. McConnell*, 173 S. W. 100, 187 Mo. App. 673, 1. c. 677.

In the Case of Marcy vs. City of Syracuse, 199 App. Div. 246, 192 N. Y. S. 674, l. c. 679, the court in defining the term "replacement" said:

"The word 'replacement' has a broader and more important meaning. It doubtless contemplates the replacing of those portions and parts that have been destroyed."

Can it be said that the words "repairs and replacements" as used in the following appropriation Act includes the payment for a skilled pump mechanic:

"C. Repairs and Replacements.

Including buildings, fencing, roads, and other structures, building equipment, including light plant, water supply and plumbing and other operative equipment, educational and recreational equipment, household, kitchen and dining room equipment, production and construction equipment (non-industrial), transportation and conveying equipment and structures, and other repairs and replacements necessary to maintain and operate the state parks."

The only case that we have been able to find on the question of whether repairs and replacements would include compensation for personal services is the case of Allen v. Oscar G. Murray, R. Employers' Ben. Fund, 189 N.Y.S. 201, wherein the lessor had a covenant to "keep the premises in good and tenantable repair", and the court held that this did not entitle lessee to reimbursement for compensation paid to a caretaker for caring for a lawn and garden, such work not constituting the making of "repairs".

To attempt to include personal services under repairs and replacements would be to give the language

a forced and unnatural construction. Furthermore, when one examines the whole appropriation act, it immediately becomes obvious that the Legislature did not intend to pay for the services for skilled help out of the repairs and replacements. Thus, under the appropriation for "Personal Services", we find the provision made for "skilled help":

"A. Personal Services:

Including twenty-seven (27) park superintendents, ten (10) assistant superintendents, forty-three (43) helpers, secretary, chief clerks, clerks, stenographer, engineers, architects, landscape architects, surveyors, draftsmen, inspectors, superintendent of operation, superintendent of maintenance, park planners, park naturalists, superintendent of construction, auditor, attorney, extra labor and skilled help, also extra help and expenses for burning fire protection lines, clearing lands, draining ditches, riding range lands, roadways and walks, life preservers, guards and other necessary services."

Even if we are able, under the law, to permit a judicial construction of the term "repairs and replacements", to include personal services which we are denied by reason of the plain intent of the Legislature. Said term could, at the most, be construed to permit only a temporary hiring of a skilled worker.

It is, therefore, the opinion of this Department that the State Park Board may not employ a technical and skilled workman, such as a skilled

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pump mechanic, by the month, and charge his salary to repairs and replacements under the 1939 Appropriation Act.

Respectfully submitted,

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APPROVED:

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