

CONSTITUTIONAL LAW:
APPROPRIATIONS TO INDIVIDUALS OR PRIVATE AGENCIES
PROHIBITED:

State funds may not be paid to private institutions or agencies for the care of indigent sick and/or the care of dependent and/or neglected and dependent children.

May 5, 1939



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Dear Sir:

This is in reply to yours of recent date in which you enclosed a letter from the Honorable John J. Butler of St. Louis who is in charge of the Catholic charities in that area. The question which is submitted in this letter is as follows: "Does your State Constitution prohibit the payment of State funds to private institutions and agencies on a per capita basis:

- a. For the care of the indigent sick?
- b. For the care of dependent, neglected, and delinquent children?"

The sections of the Missouri Constitution which apply to the appropriation of public moneys to private individuals or associations are as follows: Section 46 of Article IV:

"The General Assembly shall have no power to make any grant, or to authorize the making of any grant of public money or thing of value to any individual, association of individuals, municipal or other corporation whatsoever: Provided, That this shall not be so construed as to prevent the grant of aid in a case of public calamity."

Section 47 of Article IV provides in part as follows:

"The General Assembly shall have no power to authorize any county, city, town or township, or other political corporation or subdivision of the State now existing, or that may be hereafter established, to lend its credit, or to grant public money or thing of value in aid of or to any individual, association or corporation whatsoever, or to become a stockholder in such corporation, association or company: * * * * *

Section 7 of Article II of the Constitution provides as follows:

"That no money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect or denomination of religion, or in aid of any priest, preacher, minister or teacher thereof, as such; and that no preference shall be given to nor any discrimination made against any church, sect or creed of religion, or any form of religious faith or worship."

In our research of the cases reported for Missouri we fail to find where the Missouri courts have passed directly upon such a question as you have submitted, however, in the case of State ex rel. City of St. Louis v. Seibert, 123 Mo. 424, the court indirectly touches upon such a question. In that case when an appropriation to the insane asylum of the City of St. Louis was under consideration it seems that this asylum was a private institution and the question of the constitutionality of the appropriation was raised because it was in violation of the provision of the Constitution which appropriates public moneys to private institutions. In that case it

was held that the appropriation complied with the requirements of the Constitution because the asylum was only the agency through which the benefits passed to the individuals. In our research of later cases on this question, we find that the weight of authority is to the effect that public funds may not be paid to private individuals or corporations for the purpose of paying for the care of indigent sick, for the care of dependent, neglected and delinquent children.

In Volume 55 A. L. R. at page 311, the case of Willis Collins v. Martin, Auditor General, et al., was passed on by the Supreme Court in Pennsylvania in 1927 and found in 290 Pa. 388, 139 Atl. 122, and the question similar to the one which you have presented was under consideration. The Constitution of the State of Pennsylvania had a provision similar to the Missouri Constitution as to the appropriation of public funds for charitable and educational purposes. That Constitution provided that:

"No appropriations, except for pensions or gratuities for military services, shall be made for charitable, educational or benevolent purposes, to any person or community, nor to any denominational or sectarian institution, corporation or association."

In the Martin case, supra, it was held that acts of aiding indigent sick are charitable acts and not governmental acts. At 55 A. L. R., l.c. 316 in the Martin case it is said:

"Whether the charitable work is compulsory or discretionary, the performance is controlled by the Constitution. No function of government can be discharged in disregard of, or in opposition to, the fundamental law. If the performance of the proposed function can be done only in one way and that way is prohibited by the Constitution, then there can be no function or duty of government relating to the thing to be done. * * * * *

Overshadowing any proposed exertion of power, there is always the limitation of the Constitution. In this case no money shall be given 'to denominational or sectarian institutions, corporations, or associations.' It stands as a sentinel in its limited sphere to warn and prevent those in control who may attempt to invade the forbidden ground, and, when attention is directed to their conduct, the Constitution articulates through the courts. The state cannot secure performance of a governmental duty through a medium that has been prohibited from acting. * * * * *

Again at Lc. 318 of the Martin case the court said:

"* * * * The Constitution prohibits contracts with sectarian or denominational institutions, associations, and corporations, where the basic subject-matter is founded on an appropriation for charity and benevolence. * * * * *

And at l.c. 319 it is said:

"In conclusion we may say that it is immaterial whether the institution receiving the money is to be benefited or profited, or whether in fact such money merely replaces what is actually used in caring for this class of citizens."

In Volume 22 A. L. R., at page 1312 in the case of Bennett v. City of La Grange et al., the Supreme Court of the State of Georgia, 153 Ga. 428, in passing upon a provision of the Constitution of that state similar to Section 7, Article II of the Missouri Constitution, and in speaking of the services of the Salvation Army, said at l.c. 1317:

May 5, 1939

" * * * * * The fact that it undertakes to disseminate Christian truth, which many people believe to be the highest and holiest form of religion, does not render it unsectarian. The fact that the Salvation Army undertakes to reform the working classes, to reclaim the vicious, criminal, dissolute, and degraded, to visit the poor, lowly, and sick, which is 'pure religion and undefiled before God,' and the highest form of benevolence, does not free it from being a sectarian institution. Being such, no money can be taken, directly or indirectly, from the public treasury, to aid it in these benevolent objects and purposes. * * * * * "

From the weight of authority it seems that the provision of the Missouri Constitution would prohibit the state from enacting any legislation or appropriating any funds to private institutions and agencies on a per capita basis for the purposes which you have set out in your request.

CONCLUSION

From the foregoing it is the opinion of this department that the provisions of the Missouri Constitution would not authorize the payment of state funds to private institutions and agencies on a per capita basis for the care of indigent sick or for the care of dependent, neglected and delinquent children.

Respectfully submitted,

APPROVED:

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