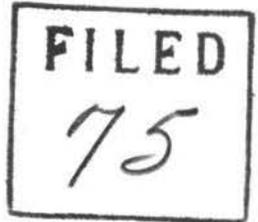


PENAL INSTITUTIONS: Cannot detail inmates to pick apples outside of penal institutions.

August 27, 1942

Hon. George A. Riley
Superintendent
Missouri Training School for Boys
Boonville, Missouri



Dear Sir:

We are in receipt of your request for an opinion, as to the authority of the Missouri Training School for Boys to allow the inmates of the Training School to gather apples from the orchard of private individuals.

Section 8972 R. S. Missouri, 1939, creates the Department of Penal Institutions, which includes the Missouri Training School for Boys. This section is a re-enactment of the Laws of 1939, Page 564.

Section 8988 R. S. Missouri, 1939 sets out the authority of the Department of Penal Institutions, as to the purchase and lease of machinery and equipment, and the employment of all the able-bodied persons in your institution. This section, which is applicable to your request, partially reads as follows:

"Said board shall, as soon as practicable, proceed to purchase, lease or otherwise provide suitable plants, machinery and equipment, and to purchase material, for the employment of all able-bodied persons in the Missouri state penitentiary, the Missouri reformatory, the industrial home for girls, the industrial home for negro

girls, or any other penal or reformatory institutions hereafter created, for such industries as in the opinion of the board will best occupy such persons, with the view of manufacturing, so far as may be practicable, such articles agreed upon by said board as are needed in any of the institutions hereinabove in this section mentioned or referred to, also such as are required by the state or political subdivisions thereof, in the buildings and offices of the institutions owned, managed or controlled by the state or political subdivision thereof, also including articles and material to be used in the erection of buildings or other improvements upon, in, or in connection with, any state institutions or state properties, or in the construction, improvement or repairs of any state highways or county highways, including bridges and culverts; including lime to be used for agricultural and other purposes in this state; also including binding twine for use of farmers and others in this state: * * * * *"

In reading the entire section it can be said that it was the intention of the legislature that any employment other than the employment of the manufacture of materials used for state departments, must be employment in the certain penal institutions, and not on the outside of the institutions. There is only one exception, and that is certain agreements with the State Highway Board for the employment of the inmates on road work. The legislature

Hon. George A. Riley

-3-

August 27, 1942

went so far as to define "State Highway Board."

Section 8988, supra, is in plain and unambiguous language, and needs no construction.

Section 8991, R. S. Missouri, 1939, reads as follows:

"Except as in section 8988, herein-above provided, the leasing or contracting of convict labor in any form or manner, directly or indirectly, is hereby prohibited."

By reason of this section, and a careful search of Section 8988, supra, we find no provision for the contracting of convict labor under the facts set out in the request.

That the legislature controls the actions of the penal board, was held in the case of State v. Becker, 47 S. W. (2d) 781, 1. c. 781, where the court said:

"The principles of law governing penal institutions and the right of such institutions to manufacture and sell commodities are well settled. The power to control such institutions is vested in the legislative branch of the government and is provided for by statutes. 50 C. J. 332; 22 Amer. & Eng. Ency. L. (2d Ed.) p. 1299, Sec. 3. * * * * *"

Hon. George A. Riley

-4-

August 27, 1942

CONCLUSION

It is, therefore, the opinion of this department, that the Superintendent of the Missouri Training School for Boys cannot send a detail of boys from the training school to help gather apples from an orchard of a neighboring farmer.

Respectfully submitted

W. J. BURKE
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General of Missouri

WJB:RW