

INSURANCE: Three questions relating to the authority of the State to insure.

June 18, 1943

6/29



Honorable Joseph A. Falzone
Missouri Senate
Jefferson City, Missouri

Dear Senator Falzone:

We are in receipt of your letter of June 18, 1943, requesting an opinion of this department on behalf of the Senate Appropriations Committee. Your letter of request reads as follows:

"Please furnish me forthwith, your answers to the following questions and your opinion in connection therewith:

"1. Is there any statutory provision prohibiting the expenditure of state funds for insurance premiums?

"2. In the absence of a specific statutory provision providing for certain insurance or certain surety bonds, does any state department, appointed or elected, have the right to expend funds for this purpose?

"3. Is it your opinion that the clause 'insurance and insurance bond premiums' which appears in numerous appropriation bills under the heading of 'operations', may be construed as statutory authority to expend funds for insurance premiums?"

In answer forthwith to question one, this department has been unable to find any express statutory provision prohibiting the expenditure of State funds for insurance premiums.

In answer to your second question, Section 48, Article IV, Missouri Constitution, provides:

"The General Assembly shall have no power to grant, or to authorize any county or municipal authority to grant any extra compensation, fee or allowance to a public officer, agent, servant or contractor, after service has been rendered or a contract has been entered into and performed in whole or in part, nor pay nor authorize the payment of any claim hereafter created against the State, or any county or municipality of the State, under any agreement or contract made without express authority of law; and all such unauthorized agreements or contracts shall be null and void."

Section 19, Article X, Missouri Constitution, provides:

"No moneys shall ever be paid out of the treasury of this State, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made, or a warrant shall have issued therefor, within two years after the passage of such appropriation act; and every such law, making a new appropriation, or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such sum or object. A regular statement and account of the receipts and expenditures of all public money shall be published from time to time."

Section 13043, R. S. Mo. 1939, provides:

"No warrant shall be drawn by the auditor or paid by the treasurer, unless the money

has been previously appropriated by law; nor shall the whole amount drawn for or paid, under any one head, ever exceed the amount appropriated by law for that purpose."

In order for State money to be expended by a department of the State, an appropriation for that purpose must be made by the Legislature, in view of the above quoted authority.

The right of a state department to expend state money for insurance may arise, first, by authority of express statute, and, secondly, by necessary implication as one of the incidental powers of the maintenance of such department. Whether or not a specific state department has statutory authority to purchase insurance may be determined by consulting the index of the Missouri Revised Statutes. Whether or not a specific state department has, as an incidental power of maintenance, the power to purchase insurance, may be determined, first, by the nature of the department, and, secondly, by considering upon what the insurance is to be carried.

On the question of the powers and duties which are incidental to maintenance, we find the rule to be stated in the following authorities and cases.

In Encyclopedia of Insurance Law, Couch, Volume I, Section 226, it is said:

"And if a city charter empower it to maintain public buildings, the city acquires, as incidental to the power thus granted the right to contract for insurance against their loss or destruction."

In the case of Clark School Township v. Home and Insurance Trust Company, 51 N. E. 107, 109, the court said:

"We are of the opinion that, under the statutory provision placed upon the trustee the duty of caring for and managing the school property, he has

such implied authorities that, in the exercise of his discretion, he may make reasonable expenditures from the special school revenue, by way of procuring insurance on such property against fire."

In the case of Walker v. Linn County, 72 Mo. 650, the court held that county courts have power to enter into contracts for insurance of county buildings against fire or lightning.

And in 59 Federal, page 741, the rule is stated that:

"Where a power is given by a statute, the courts should as a rule hold that anything necessary to make it effectual is given by implication."

It would seem that under the above quoted authorities, the purchasing of insurance by a state department might be considered a proper exercise of the power to maintain, as incidental thereto, even in the absence of an express statute giving such right or authority to the particular department. However, no state money can be expended by a department for insurance, except by implication, unless said money is appropriated for that specific purpose. In the absence of such an appropriation such money would have to come out of some other fund, such as a fund for miscellaneous purposes or a fund which did not exist by virtue of a legislative appropriation.

Your third question is answered in the negative.

Appropriation bills are not such legislative enactments as may be considered as carrying statutory authority.

Section 28, Article IV, Missouri Constitution, provides as follows:

"No bill (except general appropriation bills, which may embrace the various

subjects and accounts for and on account of which moneys are appropriated, and except bills passed under the third subdivision of section forty-four of this article) shall contain more than one subject, which shall be clearly expressed in its title."

In the case of *State v. Smith*, 75 S. W. (2d) 828, 335 Mo. 1069, the following is taken:

"It cannot be said that the act appropriating \$3,000 from the general revenue fund to the board of barber examiners' fund amounted to an amendment of section 13525, R. S. 1929 (Mo. St. Ann. Sec. 13525, p. 637). It does not attempt to amend that section. Its sole purpose was to appropriate \$3,000 from one fund to another. It reads as follows:

"There is hereby appropriated out of the state treasury, chargeable to the general revenue fund, the sum of three thousand (\$3,000.00) dollars to the Board of Barber Examiners Fund." (Laws 1933-34, p. 12, Sec. 12B.)

"Besides, legislation of a general character cannot be included in an appropriation bill. If this appropriation bill had attempted to amend section 13525, it would have been void in that it would have violated section 28 of article 4 of the Constitution which provides that no bill shall contain more than one subject which shall be clearly expressed in its title. There is no doubt but what the amendment of a general statute such as section 13525, and the mere appropriation

of money are two entirely different and separate subjects. State ex rel. Mueller v. Thompson, State Auditor, 316 Mo. 272, 289 S. W. 338."

Under the authority of the above quotation a mere appropriation bill carrying the clause "insurance and insurance bond premiums," does not amount to statutory authority for the department to which the appropriation bill applies, to purchase insurance. To the same effect is State v. Gordon, 236 Mo. 142.

CONCLUSION

It is, therefore, the opinion of this department that (1) there is no statutory prohibition against a department of the State to purchase insurance; (2) that no State money can be expended by a department of the State of Missouri for insurance unless said State money is appropriated for that specific purpose, except where such expenditures can be condoned on an exercise of some incidental power of the department; and (3) that appropriation bills which contain the clause "insurance and insurance bond premiums," are not such statutory enactments as to give a department statutory power thereby to purchase insurance.

Respectfully submitted,

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APPROVED:

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