

ELEEMOSYNARY INSTITUTIONS: The Board of Managers of the Missouri School for the Blind may provide additional facilities to be paid out of a fund that does not contain an appropriation from the State of Missouri.

June 11, 1946



6-24
Mr. Martin J. Collins, President
Board of Managers
Missouri School for the Blind
3815 Magnolia Avenue
St. Louis, Missouri

Dear Sir:

We hereby acknowledge your letter of recent date, requesting an opinion of this department, which reads as follows:

"For years, the Missouri School for the Blind at St. Louis has sought legislative appropriations to complete its building as it was planned in 1903. Through these years appropriations for this purpose have not been forthcoming.

"In the last few years, friends of the blind have been leaving money to the school to increase the facilities or otherwise improve the opportunities of these blind boys and girls in their pursuit of learning. The Board of Managers has conserved these funds in the hope that some day they might provide some of these additional facilities which the state has been unable to provide.

"A recent bequest, being settled in the May term of court, seems to provide the additional amount of funds to make possible the addition of a part of these needed facilities. The Board of Managers feels that under Chapter 72, Article 25, Section 10864, R.S. Mo. 1939, it has authority to use real or personal property donated to the school in the best interests of the school. The

Board has decided that the construction of part of the needed additional facilities for the school is most urgent,

"It has authorized a plan to request bids through the office of the State Purchasing Agent in the same manner as is required for funds appropriated from the State Treasury, except that the contract will be signed by the Board of Managers guaranteeing payment from these donated funds.

"1. The Board of Managers seeks to verify whether it has this authority under the section mentioned above."

Article 25, R. S. Mo. 1939, provides for the governing of the Missouri School for the Blind and the Missouri School for the Deaf. The following statutes of this article, which we quote in this opinion, will be considered only as they apply to the Missouri School for the Blind.

Section 10864 of said article, which provides for the control of the school property, reads as follows:

"The board of managers of each school shall have the care and control of all the property, real and personal, owned by such school, and the title to all real estate or personal property now owned by such school, or by the state for its use, or that may hereafter be purchased by or donated to such school shall be vested in such board of managers of the respective schools, for the use and benefit of the said school. The board of managers of either school shall not sell or in any manner dispose of any real estate belonging to the school without an act of the general assembly authorizing such sale or disposal of such real estate. The boards of managers shall provide their respective schools with an official seal."

Section 10851 of said article provides:

"There shall be a treasurer of each school, appointed by the board of managers of the school, who shall give bond for the faithful performance of his duties in such sum, and with such sureties, as shall be required by the board. He shall have the custody of all moneys, obligations and securities belonging to the school, and shall make payment on such warrants and orders as prescribed by the board. He shall submit to the board each month a statement of moneys received and a list of the warrants, orders or checks paid by him the past month, giving the names of all persons to whom such payments were made. The treasurer shall reside in the city in which the school is located."

Under the above section the treasurer has custody of the moneys, obligations and securities of the school. The expenditure of this property by him is limited only by the orders of the board, and the board's powers are limited to the use of the property only for the benefit of the school. We are unable to find any other limitation except Section 10868 of this article, which will be considered later in this opinion. We believe this portrays an intention of the General Assembly to grant broad discretionary powers to the board in the management of the property of the school. Of course, if the disposition of real estate is involved in your proposition it will be necessary for the General Assembly to pass an act authorizing the sale or disposal of the same.

Section 10850 of said Article 25 provides:

"The board of each school shall make detailed reports biennially to the general assembly of their proceedings, the condition of the school, the number of pupils, and other facts connected with the school, including the exact receipts and expenditures of the board, accompanied by the biennial reports of the superintendent, treasurer, and such other reports as the board may deem necessary."

Since a report of the "exact receipts and expenditures" is required, we believe that the General Assembly contemplated that the board would be recipients of other property than that appropriated from the State Treasury. As a matter of fact, the board has, throughout the years, received property gifts from many individuals. In that it has been necessary to show these on the reports to the General Assembly, and, since no law has been passed as to the disposal of same, we believe that the General Assembly contemplated that the Board of Managers would have complete control over this property, subject only to the provisions of Article 25, R. S. Mo. 1939. If this were not true, then they could have passed further laws dealing with the expenditure of this fund.

Although the exact question presented for opinion has not been passed on by the courts of this state, we believe the case of State ex rel. Thompson, State Treasurer, v. Board of Regents for Northeast Missouri State Teachers' College, 305 Mo. 57, 264 S.W. 698, presents an analogous situation. The Board of Regents of the Northeast Missouri State Teachers' College were recipients of a large sum of money from an insurance policy which they had placed on the school buildings. They wished to use this money to replace a building destroyed by fire, but the state contended that the money should be paid into the State Treasury. The court held that the money was not to be paid in to the State Treasurer and that the Board of Regents had broad discretionary powers in the manner in which the said money should be spent. Like the Board of Managers for the Missouri School for the Blind, the Board of Regents were given, by statute, broad powers of management of the school property.

It might further be argued that this money should be paid into the State Treasury under Article IV, Section 15 of the Constitution of Missouri of 1945, which provides in part:

"* * * All revenue collected and moneys received by the state from any source whatsoever shall go promptly into the state treasury, and all interest, income and returns therefrom shall belong to the state. * * * * *"

This question was also answered by the Supreme Court in the case of State ex rel. Thompson, State Treasurer, v. Board of Regents for Northeast Missouri State Teachers' College, supra.

Article IV, Section 43, Constitution of Missouri of 1875, provides in part:

"All revenue collected and moneys received by the State from any source whatsoever shall go into the treasury,
*****"

It can readily be seen that the provisions of the two Constitutions quoted above are very similar. Therefore, the interpretation by the court of the section of the Constitution of 1875 is a very significant guide to the answer to our question. In holding that the money received would not come under the above constitutional provision of 1875, the court states, l. c. 65:

"* * * Unless, therefore, it can be successfully contended in harmony with well recognized rules of interpretation that the Board of Regents of the College is the State and that moneys received by it other than from appropriations is state money; the constitutional provision will afford no support to the regulator's contention.

"While the board, in a sense, represents the State in the performance of its duties, it is but one of the many necessary instrumentalities through which the former is enabled to act within the scope of the powers conferred by law. These powers embody no attributes of sovereignty which would entitle them to be designated as the State's alter ego. While in a sense, the board is an agent of the State with defined powers, the importance of its duties, with their attendant responsibilities, is such as to necessarily clothe the board with a reasonable discretion in the exercise of same. This is inevitably true, first, because of the difficulty in framing a statute with such a regard for particulars as to cover every exigency that may arise in the future; and, second, because a restriction of the board's powers to the letter of the law would destroy its efficiency and to

that extent cripple the purpose for which the institution was created. Legislatures, therefore, moved by that wisdom which is born of experience whether conscious or not of that aphorism that 'new occasions teach new duties; time makes ancient acts uncouth,' have contented themselves with defining in general terms the powers of such boards as are here under review, leaving the discharge of duties not defined and which may, under changed conditions, arise in the future, to the discretion of the board."

From the above language of the Supreme Court it seems very clear to us that the fund in question of the Missouri School for the Blind would not be required to be paid into the State Treasury and, therefore, would not be state money.

You state in your letter that you have "authorized a plan to request bids through the office of the State Purchasing Agent in the same manner as is required for funds appropriated from the State Treasury." We believe this is necessary, and sufficient, to comply with the other sections of Article 25, R. S. Mo. 1939, and especially with Section 10868 of said article, which reads as follows:

"All purchases for either school shall be at the lowest price, and to this end the board of managers of such school shall require, as far as practicable, all purchases to be made from the lowest bidder, and shall invite competition by requiring its purchasing agent to notify leading dealers in the articles to be purchased of the quantity wanted and when to be delivered, such notices to be sent to all leading dealers in the town where the school is located, and also to dealers in such articles as are wanted in any city in the state where such articles are purchased for the ordinary trade of the town where the school is located. The board shall furnish to its purchasing agent or officer who has charge of this business suitable blanks, designating the articles wanted and the time they are to be delivered. All bids for such articles shall be made for

the articles delivered at the school free of any charge for freight or expressage. Whenever any dealer in such article or articles as may be wanted by either school shall request the board, or any officer of the school, to furnish such dealer with such notice, such purchasing agent shall mail to such dealer such notice, and his bid shall be considered with others before purchase is made. At each monthly meeting the officer or agent whose duty it is to make such purchases shall lay before the board all bids received by him, and contracts made for such supplies as he may have purchased, and the accounts for the same shall be allowed and warrants ordered therefor at the next meeting of the board: Provided, such articles shall have been delivered and received by such agent or officer according to the contract therefor: Provided, that nothing in this article shall prohibit any board from making contracts for a longer time than one month."

It is noted that Senate Committee Substitute for Senate Bill No. 297, truly agreed to and finally passed, with an emergency clause, by the 63rd General Assembly, and approved by the Governor, April 26, 1946, provides for a director of public buildings.

Section 118, subsection (d), of the above bill, providing for the director's duties and responsibilities, reads in part as follows:

"(d) The Director shall serve as an advisor and consultant to all department heads in obtaining architectural plans, letting contracts, supervising construction, purchase of real estate, inspection and maintenance of buildings. No contracts shall be let for repair, rehabilitation, or construction of buildings, without approval of the Director, and no claim for repair, con-

struction or rehabilitation projects under contract shall be accepted for payment by the state without approval by the Director: Provided, that there is excepted herefrom the design, architectural services, construction, repair, alteration or rehabilitation, of all laboratories, libraries, class-rooms, technical buildings used for teaching purposes, and those buildings or utilities serving such educational units, and any building or teaching unit built wholly or in part from funds other than State appropriations."

(Emphasis ours.)

From the above statements in your letter for opinion, the money to be used for the improvements has been left to the school by different individuals, and, it is from this fund, and this fund only, that you will pay for said improvements. This being the case, the proviso of the above section will apply and the procedure will be governed by Article 25, R. S. Mo. 1939.

Conclusion

Therefore, it is the opinion of this department that the Board of Managers of the Missouri School for the Blind may provide additional facilities, to be paid out of a fund that has been created by gifts from certain individuals in the last few years.

Respectfully submitted,

PERSHING WILSON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

PW:CP