

APPROPRIATIONS: Appropriation to Department of Corrections may not be used to purchase household furniture and furnishings for residences owned by State of Missouri.

STATE MONEY: Rent received by State of Missouri upon residences owned by state to be paid to the Department of Corrections for transmittal to the state treasurer.

June 29, 1949



Mr. Leo J. Clavin
State Purchasing Agent
Jefferson City, Missouri

Dear Sir:

Reference is made to the request of your predecessor in office for an official opinion of this department, reading as follows:

"We have received several requests, to purchase household furnishings for the State owned residence of the Superintendent of Industries, The Warden and the Director of Penal Institutions.

"I would appreciate having your opinion, as to whether or not, we have authority to buy household furnishings for these so called residences, as I am under the impression, that these houses are rented unfurnished.

"Second, if these houses are rented as such, I would appreciate your further opinion, as to who should collect the rents and to what fund same should be deposited."

For convenience, the opinion will be divided into two elements.

I.

Under the provisions of Sections 11008.62 to 11008.84, inclusive, Mo. R.S.A., the duty of purchasing supplies, public printing and negotiating leases on behalf of various state departments has been placed upon the Division of Procurement of the Department of Revenue, headed by the State Purchasing Agent. However, we do not find that such duty also requires such officer to predetermine the legality of proposed purchases. To the contrary, the duty of pre-auditing claims which might

or could arise by virtue of contractual arrangements entered into by the State Purchasing Agent on behalf of the various departments of state has been enjoined upon the Division of Budget and Comptroller of the Department of Revenue. See Sections 11008.34 to 11008.61, inclusive, Mo. R.S.A. However, in view of the likelihood of the precise question which you have asked, being submitted to this department by such certifying officer, it has been decided that an opinion will be written based upon the request.

The general rule with respect to the exercise of property rights over all property, both real and personal, owned by the state is stated thus in 59 C.J., Paragraph 276, page 164:

" * * * The power of the state in respect of its property rights is vested in the legislature, and the legislature alone can exercise the power necessary to the enjoyment and protection of those rights by the enactment of statutes for that purpose; * * * "

It therefore becomes necessary to determine whether or not the General Assembly of this state has, by statutory enactment, enunciated the public policy with respect to the use of the residences referred to in the letter of inquiry.

With respect to the Superintendent of Industries, we do not find any statute authorizing the occupancy of a state owned residence by such officer.

With respect to the Warden of the State Penitentiary, we find that under the provisions of Section 12467, R. S. Mo. 1919, the then Warden of the State Penitentiary was specifically authorized to live "in a house" situated on the penitentiary grounds. The rights of the Warden of the Penitentiary to such occupancy provided under the statute mentioned were specifically abrogated under the provisions of an act found Laws of Missouri, 1921, at page 554, and the privileges theretofore exercised by such Warden with respect to such house were transferred to the newly created office of Director.

All of the above-mentioned statutes were affected by an act of the 63rd General Assembly, found Laws of Missouri, 1945, page 723, and now appearing as Sections 8992.1 to 8992.47, Mo. R.S.A.

In Section 8992.2, Mo. R.S.A., after providing for the appointment of a chief administrative officer of the Department of Corrections to be known as the Director of the Department of Corrections, the following is found:

" * * * The director shall receive a salary of seven thousand five hundred dollars a year and shall in addition have the residence near the penitentiary heretofore used by the director of penal institutions."

From the foregoing, it is apparent that the rights with respect to the occupancy of the residence therein referred to that have been successively enjoyed by the Warden of the State Penitentiary and the Director of Penal Institutions have now been granted to the Director of the Department of Corrections. We assume that such officer is the one referred to in the letter of inquiry as the "Director of Penal Institutions."

We have further examined the provisions of the act creating the Department of Corrections referred to supra, and find that provision has been made under Section 8992.15, Mo. R.S.A., for the appointment of a Warden of the State Penitentiary. However, we do not find that any provision has been made for such officer for the occupancy of any state owned residence.

It therefore becomes necessary to determine whether or not the acquisition of household furniture and furnishings for the residence to be occupied by the Director of the Department of Corrections is a proper expenditure to be made from the appropriation made by the General Assembly to such department. Such appropriation for the current fiscal year is found in Volume II, Laws of Missouri, 1947, page 88. Included in Section 5.020 of such appropriation act, we find the following items:

"C. Repairs and Replacements:

"Building and building equipment, operating equipment, including educational and recreational equipment, household, dining room, and kitchen equipment, hospital, surgical and medical equipment, office furniture and equipment, production and construction equipment (Non-Industrial), shop, garage, and stable equipment (Non-Industrial),

transportation and conveying equipment,
farming equipment, and for repainting.
..... \$40,000.00

"D. Operation:

"General expense: including communication,
printing and binding, transportation,
travel within and without the state, rental
of lands and buildings, materials and sup-
plies, household supplies, subsistence,
clothing, rewards, discharged inmates,
convict earnings, bonds, insurance, and
other operating expenses.... \$668,250.00

It might be thought that the inclusion in the appropriation act of the provision for the purchase of "household" equipment or "household" supplies might serve to authorize such acquisition. However, keeping in mind the general rule that statutory authority must exist with respect to the use of state owned property, we believe that the mere inclusion of these items, which may equally as well be used for the general operation of various institutions under the control of the Department of Corrections, cannot have this effect. We do not find any statute directly and specifically authorizing the furnishing of household furniture or furnishings for any of the officers mentioned in the letter of inquiry, and absent such statutory authority, we do not think that such may be lawfully supplied. Significantly, the original act authorizing the use of the "house" by the Warden specifically included the right to "fuel and light," which has been omitted in subsequent enactments.

Furthermore, it may not be successfully contended that the mere inclusion of the items in the appropriation bill can serve to extend such authority, for to do so would construe the appropriation act as including legislation of a general nature. This may not be done as appears from State ex rel. vs. Canada, 113 S.W. (2d) 783, wherein the Supreme Court said, l.c. 790:

" * * * Legislation of a general character cannot be included in an appropriation bill. To do so would violate section 28 of article 4 of the Constitution, (retained in substance as Section 23, Article III, Constitution of Missouri, 1945) which provides that no bill shall contain more than one subject which shall be clearly expressed in its title. There is no question but

what the mere appropriation of money and the amendment of section 9622, a general statute granting certain authority to the board of curators, are two different and separate subjects. State ex rel. Davis v. Smith, 335 Mo. 1069, 75 S.W. 2d 828; State ex rel. Hueller v. Thompson, 316 Mo. 272, 289 S.W. 338. * * * "

(Words in parentheses ours.)

From the foregoing, we are persuaded to the opinion that statutory authority does not exist for the occupancy of state owned residences by any of the officers mentioned in the letter of inquiry, and that the only such officer employed by the Department of Corrections so entitled is the Director of the Department of Corrections. It is our further opinion that the provisions of the appropriation act, Laws of Missouri, 1947, Volume II, page 88, do not authorize the acquisition of household furniture and furnishings to be used in any state owned residences under the supervision of the Department of Corrections.

II.

The second question found in the letter of inquiry relates to the proper person to receive rentals based upon the occupancy of state owned residences under the control of the Department of Corrections.

In this regard your attention is directed to Section 15, Article IV of the Constitution of Missouri, 1945, reading as follows:

"The state treasurer shall be custodian of all state funds. 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. * * * "

While no specific statutory reference to the proceeds of the rentals of state owned property has been found, it is our thought that money so received should go into the General Revenue Fund of the state.

Section 9045, R. S. Mo. 1939, reads as follows:

"The commission shall attend to the financial concerns of the penitentiary and shall pay into the state treasury all moneys received by them on account of the institution, and shall keep in suitable books regular and complete accounts of all moneys received, and from what source, and shall have vouchers for all money disbursed. The books shall exhibit the profits or losses of each branch of manufacturers."

The duties of the "commission" referred to in the quoted statute have been transferred to the Department of Corrections under the provisions of Section 8992.1, Mo. R.S.A. It therefore seems that such department should make the collections of rentals and handle the same in accordance with the statute quoted.

CONCLUSION

In the premises, we are of the opinion that household furniture and furnishings may not be acquired by the State Purchasing Agent on behalf of the Department of Corrections to be placed in and used by the occupants of the state-owned residences under the control of the Department of Corrections.

We are further of the opinion that rentals accrued by the virtues of the occupancy of such state-owned residences are to be collected by the Department of Corrections and by such agency transmitted to the State Treasurer in accordance with the provisions of Section 9045, R. S. Mo. 1939.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
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WFB:VLM