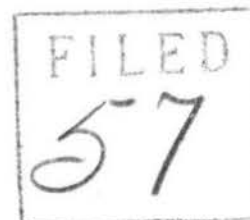


WITH
BUILDINGS
APPROPRIATIONS

) No specified number of houses for physicians re-
) quired under the provisions of appropriations
) set out on pages 107 and 189, Laws of Mo. 1947,
Vol. II.

April 11, 1949



Mr. Samuel Marsh, Director
Department of Public
Health and Welfare
State Office Building
Jefferson City, Missouri

Dear Mr. Marsh:

This is in reply to your request for an opinion from this Department which reads as follows:

"The Sixty-fourth General Assembly, in the first session, appropriated the sum of \$78,000 'for constructing and furnishing six houses for physicians'. Laws of Missouri 1947, Volume I, Section 3, page 171, lines 4 and 5.

"The Sixty-fourth General Assembly in the second session, reappropriated the same \$78,000 fund, as no part of the first appropriation had been encumbered or expended because we were advised by competent architects and contractors that we could not build desirable houses under conditions existing in the construction field at the time the appropriation was originally made.

"In the Act re-appropriating this \$78,000 fund the word 'six' was omitted from the sentence 'for constructing and furnishing six houses for physicians', so that the wording in the Act which re-appropriated the money reads 'For constructing and furnishing houses for physicians'. Laws of Missouri 1947, Volume II, Section 5.111, page 107 lines 7 and 8.

"Also in the second session of the Sixty-fourth General Assembly another Act was passed supplementing this fund of \$78,000 by appropriating an additional \$42,000, and the wording used in this Act was the same as in the last Act re-appropriating the \$78,000 fund, namely: 'For constructing and furnishing houses for physicians'. Laws of Missouri 1947, (Volume II) Section 9.230, page 189, lines 3 and 4.

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"On March 23, 1949, we opened bids for the construction of these houses. We advertised the project in such a manner that we received bids from the contractors for either 4, 5, or 6 houses. For the total of six houses the lowest bid was above the amount of the combined appropriation of \$120,000. However, the appropriation would cover the lowest bid for only four houses.

"We would like your opinion as to whether, if we deem it to the best interest of the State to build only four houses, we can lawfully let a contract for the construction of less than six houses."

(Parenthesis ours.)

In your request you have set out the sections of the appropriation acts with which we are concerned. It should be noted, however, that the General Assembly provided in Laws of Missouri 1947, Vol. II, page 107, as follows:

"Provided, however, that all expenditures made under the provisions of Section 3 of House Bill No. 283, an Act of the 64th General Assembly, approved July 25, 1947, shall be charged against the appropriation set out in this section, and in no case shall the expenditures in Section 3 of House Bill No. 283 and the expenditures authorized under the provisions of this section exceed the total amount of the items set out in this section."

We understand the above quoted proviso to indicate an intent of the legislature that the total amount of money to be expended in the construction and furnishing of houses for physicians at State Hospital Number 1 to be in the amount of \$78,000. As you point out in your request this amount of \$78,000 was later supplemented by an additional \$42,000, for the same purpose.

The authority for an expenditure of money to provide living quarters for physicians at the State Hospital is to be found in Laws of Missouri 1947, Vol. I, page 315, Section 10d., which reads as follows:

"The department of public health and welfare may provide any employee in any institution under its control with board and living quarters in addition to a salary, or wages, when the director shall determine that it is for the best interests of the state to do so."

Appropriations made by the General Assembly follow a provision of the law which provided for a Department of Revenue. In Laws of Missouri 1945, page 1447, Section 55 reads in part as follows:

" * * * Appropriations for the operation and maintenance of departments shall be separately itemized; and separate appropriations shall be made for each item of extraordinary operation and maintenance expenditure and for each major capital expenditure.
* * * "

The original appropriation in question was in the amount of \$78,000 for the construction and furnishing of six houses. Broken down it is seen that this amounted to an average of \$13,000 a house. Before this fund was used, the period of time for which the appropriation was available elapsed. Thereupon, the General Assembly reappropriated the same amount of money making it available to the department for the above stated purpose. Because of the conditions existing in the construction field at that time, the appropriation was deemed insufficient for construction and furnishing of the desired number of residences. Therefore, an additional amount of \$42,000 was added by supplementary appropriation, making a total of \$120,000.

However, in both the reappropriation Act and the supplementary appropriation thereto, the General Assembly omitted the word "six" which previously modified the word "houses". From a mere reading of the appropriation acts, there is nothing to indicate that the General Assembly intended that an effort should still be made to build and furnish six houses at State Hospital No. 1. Since there is no such expressed intention, we believe that it has been left to the sound discretion of the administrators of this fund to determine the cost of the houses.

We note that the General Assembly appropriated for the F. Y. of July 1, 1947 to June 30, 1948, a sum in the amount of \$403,000 for the construction and furnishing of houses for physicians. The legislature renewed this appropriation for the F. Y. July 1, 1948, to June 30, 1949. Later, this amount was supplemented by appropriations totalling \$317,000, making a grand total of \$720,000 available to the Department of Public Health and Welfare for the construction and furnishing of houses for physicians.

Out of the above named total appropriation, contracts have been let for the construction of six houses at State Hospital No. 4, Farmington, Missouri. The appropriation for these houses is in the

same form as that provided for the houses at Fulton (See Laws of Mo. 1947, Vol. 2, pages 113 and 193). The total amount of the contract sum for the six houses at Fulton is \$107,281.64, thereby making an average cost of the houses approximately \$17,880.00.

One house has been built at State Hospital No. 3, Nevada, provided for by an appropriation in the same form as the appropriation for Fulton. (See Laws of Mo. 1947, Vol. 2, pages 111-191.) The contract price for the one house at Nevada was \$15,700.00.

The low bidder for the construction of six houses at Fulton entered a base bid of \$139,984.00. By deducting alternates in the contract, namely houses E and F, the base bid was lowered to \$103,713.00, for the construction of four houses, making an average of approximately \$26,000.00 per house. However, House A as provided for by the drawings and the specifications is larger and necessitates more work thereby reducing the average cost of three of the houses and increasing the cost of House A considerably.

From the facts above, it is seen that there has been appropriated a large sum of money to be used for construction of living quarters for physicians, at the state institutions. In making the appropriations, the legislature, whether by inadvertence or otherwise, omitted any indication as to the number of houses to be built. We have seen that the first expenditure from these appropriations at Farmington will result in the construction of six houses, as contemplated in the original bill. (See Laws of Mo. 1947, Vol. 1, page 173.) Also, we have seen that one house has been built at Nevada for \$15,700.00, which is in conformity with the original intent of the legislature. (See Laws of Mo. 1947, Vol. 1, page 172) Nonetheless under the present appropriation acts the legislature has apparently left to the administrators of these funds discretion as to the costs of the houses for the physicians at these institutions.

We are unable to see any legal objection for the expenditure of this appropriation on only four houses instead of six. In so ruling, we must necessarily consider only the legal problem involved, and we do not in any way rule on the wisdom of such a course.

CONCLUSION.

Therefore, it is the opinion of this department that there is no requirement that six houses for physicians must be constructed and furnished from the appropriation provided by the General Assembly

Mr. Samuel Marsh

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in Laws of Missouri 1947, Volume II, pages 107 and 189. If the persons charged with the expenditure of these sums deem it is to the best interest of the state to build only four houses, such a contract may lawfully be let.

Respectfully submitted,

APPROVED:

JOHN R. EATY
Assistant Attorney General

J. E. TAYLOR
Attorney General

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