

PUBLIC BUILDINGS:
CORRECTIONS, DEPARTMENT OF:
LEGISLATION :
REVISION LAWS:

Revision of all statutes bearing on the same subject-matter do not affect construction. Department of Corrections subject to provisions of Act setting forth the duties and responsibilities of the Director of Public Buildings.

August 10, 1950

8/10/50

Honorable Ben Marvin Casteel
Director
Department of Corrections
Jefferson City, Missouri



Dear Mr. Casteel:

This is in reply to your request for an opinion which is as follows:

"I wish to request an opinion from your office relative to the following matters:

"1. Section 217.13 of Senate Bill No. 1069, Truly Agreed and Finally Passed (Revision), states as follows:

"The director and governor shall decide what improvements are necessary, not otherwise provided by law, which improvements shall be made under the direction and supervision of the division. In making any necessary improvements under the provision of this section, the division may, if in its discretion it shall be necessary, employ the services of an engineer, draughtsman or architect to make such plans and specifications as may be necessary therefor'.

"As you no doubt know, the engineering section of the division of penal institutions is charged with maintenance, repairs and replacements, new construction, operation of power-generating equipment

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and other mechanical equipment. It is frequently necessary to make emergency repairs at all hours of the day and night when it would be impossible to clear such matters through the Department of Public Buildings.

"Senate Bill No. 1068, Truly Agreed to and Finally Passed (Revision), Section 216.02, Paragraph 5, states:

"To have control and jurisdiction of all real estate, buildings, equipment, machinery, facilities and products properly belonging to or used by or in connection with any of said institutions and branches thereof".

"2. Does this not give us the authority to carry on the above mentioned functions of the engineering section?

"3. Does not the revision bills supercede the authority given the Department of Public Buildings in the Laws of 1945 and relieve them from control of the purchase of land, new construction, repairs and replacements, operation and installation of power-generating and mechanical equipment?"

The first question which must be answered in connection with your request is the effect of revision bills upon the law as existing and as interpreted. In the case of State ex rel. McElanahan vs. DeWitt, et al., 160 Mo. App. 304, the Court said, l.c. 307:

"* * * The different sections relating to the same subject and found in the same revision must for the purpose of construction be regarded as in pari materia. * * *."

465:

In 50 Am. Jur. the following rule is stated at l.c.

"* * * Indeed, it is a settled rule of construction that where the entire legislation affecting a particular subject-

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matter has undergone revision and consolidation by codification the revised sections will be presumed to bear the same meaning as the original sections and will generally be so construed. The legislative intent to change the former statute must be clear before it can be pronounced that there is a change of such statute in construction and operation. * * * ."

From the above it is seen that when construing revised or codified statutes, different sections relating to the same subject must, for the purpose of construction, be regarded as in pari materia. Since all the sections are carried over in the revision, we must seek the legislative intent from the language used and must bear in mind that the revised sections should receive the same construction as the original sections. Statutes in pari materia, even though enacted at different dates, are to be construed together, and if possible, given such construction as will harmonize and give effect to all provisions. (State ex inf. Barker vs. Koeln, 270 Mo. 174, 192 S.W. 748).

You have noted in your opinion request that the 65th General Assembly has provided in Senate Bills Nos. 1068 and 1069 for a continuation of the authority and duties of the Director of the Department of Corrections in relation to control and jurisdiction of real estate, buildings, equipment and improvements.

With only technical changes necessary to comply with the new departmental set-up, Section 217.13 of Senate Bill 1069 is the same as Section 9070, R.S. Mo. 1939. Section 9070 was originally enacted in 1917, and is as follows:

"Said commission and governor shall decide what improvements are necessary, not otherwise provided by law, which improvements shall be made under the direction and supervision of the commission. In making any

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necessary improvements under the provisions of this section, the commission may, if in its discretion it shall be necessary, employ the services of an engineer, draughtsman or architect to make such plans and specifications as may be necessary therefor."

Said Section 9070 was in force at the time of the passage of an Act by the 63rd General Assembly making provision for a department of state government to be known as the Division of Public Buildings, and assigning the duties and responsibilities of the Director of Public Buildings.

"(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, construction 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."

(Laws of Missouri, 1945, page 1463, Section 118 (d)).

This section has been carried over in substantially the same form in Senate Bill No. 1003, enacted by the 65th General Assembly and signed by the Governor on December 31, 1949.

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You also make mention in your opinion request of Section 216.02(5) of Senate Bill No. 1068 of the 65th General Assembly. This is a revision bill and the substance thereof is to be found in an Act passed by the 63rd General Assembly, found in Laws of Missouri, 1945, at page 727, Section 11. This section reads as follows:

"In all laws of Missouri or parts thereof, the words 'department of corrections' shall be substituted for the words 'commission of penal institutions' with respect to institutions and activities pertaining to intermediate and adult offenders. Said department shall hold and exercise control and jurisdiction over all intermediate and adult correctional and penal institutions and activities in this state, except such powers and duties as may be assigned to the board of probation and parole, supported in whole or in part by the direct appropriation of money out of the state treasury, including the state penitentiary, the women's branch of the state penitentiary, the intermediate reformatory for young men at Algoa, and over any other correctional institution for intermediate and adult offenders as may hereafter be established; and over all the branches of such institutions, and over all the real estate, building, equipment, machinery, facilities and products properly belonging to or used by or in connection with said institutions and branches thereof, and over the activities of these institutions and branches; and the department shall make and enforce such orders and findings as it may from time to time deem necessary and proper in the management of all institutions and persons committed to its control and shall be vested with and possessed with all other powers and duties necessary and proper to enable it to carry out fully and effectively all the purposes of this act."

An examination of the law pertaining to the duties and responsibilities of the Director of Public Buildings shows that he "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." We fail to see how the authority given the said Director by this section is in such conflict with the powers and duties vested in the Director

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of the Department of Corrections by the sections referred to above that they may not be harmonized. You will note that the Legislature used the terminology "advisor and consultant" in describing the Director's duties in relation to the obtaining of architectural plans, letting contracts, supervising construction, purchase of real estate, inspection and maintenance of buildings. Therefore, it would seem apparent that the Director of the Department of Corrections is primarily obligated to care for the buildings under his supervision. However, to assist him in carrying out this work the Legislature has provided the office of the Director of Public Buildings, and further provided that there should be appointed thereto, a person "qualified by training and experience to deal with construction, operation, maintenance and repair of buildings, and shall be of recognized competence in the field of building administration." (Laws of Missouri, 1945, page 1462, Section 112.)

However, we believe the Legislature showed an unmistakable intent that the Director of Public Buildings must approve contracts for repair, rehabilitation or construction of buildings. Note the following language used in connection with the duties and responsibilities of the Director of Public Buildings. "No contracts shall be let for repair, rehabilitation, or construction of buildings, without approval of the Director, and no claim for repair, construction or rehabilitation projects under contract shall be accepted for payment by the state without approval by the Director." We think that the above provision can readily be harmonized with the sections dealing with the authority given to the Director of the Department of Corrections. These provisions do not relieve the said Director of Corrections of his primary duty to let the contracts for the repair, rehabilitation and construction of buildings. They do make it mandatory that in such instances he secure the service of a public officer qualified in the field by requiring the approval of the Director of Public Buildings before such contracts are let and before claims are accepted for payment.

Further than this we may also have recourse to the rule of statutory construction "expressio unius est exclusio alterius" (mention of one thing in a statute implies exclusion of another) in aid of the fundamental objective which is to ascertain the intent of the Legislature. You will note that the statute has excepted any duties and responsibilities of the Director of Public Buildings in relation to buildings or utilities serving educational units. Because of this exception, we must give full effect to the all-inclusive language

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used by the Legislature in setting out the duties of the Director of Public Buildings in relation to all other departments. Note that the Legislature used the language "all department heads" and also "no contracts shall be let." The only exception made was in relation to buildings serving educational units. Therefore, unless another intent is manifested, and we find none, we must conclude that the Legislature intended to include all other state departments.

In your request you also indicate a desire to have answered the question of whether the Division of Penal Institutions is charged with maintenance, repairs and replacements, new construction, operation of power-generating equipment and other mechanical equipment. There is also the question of emergency repairs at all hours of the day and night, when it would be impossible to clear such matters through the Division of Public Buildings.

We have already considered this matter with regard to new construction, repairs and replacements. In reference to the other matters mentioned we call your attention to Section 216.20 of Senate Bill No. 1068, which provides, in part, as follows:

"The department of corrections shall have the following powers:

* * * * *

"3. To have control and jurisdiction over all intermediate and adult correctional and penal institutions and activities in this state supported in whole or in part by the direct appropriation of money out of the state treasury, including the state penitentiary, the women's branch of the state penitentiary, the intermediate reformatory for young men at Algoa and over any other such correctional and penal institution which may hereafter be established, except such powers and duties as may be assigned to the board of probation and parole.

* * * * *

"5. To have control and jurisdiction of all real estate, buildings, equipment, machinery, facilities and products properly belonging to or used by or in connection with any of said institutions and branches thereof.

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"6. To make and enforce such rules, regulations, orders and findings as it may deem necessary for the proper management of all institutions and persons committed to its control. "

We believe that the above sections are sufficient to endow the Department of Corrections with the control and management of the penal institutions insofar as your inquiry is addressed.

CONCLUSION.

Therefore, it is the opinion of this department that the provisions pertaining to the duties and responsibilities of the Director of Public Buildings are applicable to the Department of Corrections. The Department of Corrections is charged with the duty of maintenance and repairs, operation of the power-generating equipment and other mechanical equipment used in the operation of the institutions under its control.

It is the further opinion of this department that the revision of existing statutes in substantially the same language does not affect the construction and interpretation of said statutes.

Respectfully submitted,

JOHN R. BATY
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

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