

APPROPRIATIONS:

No disbursements to be made under Section 10.380, Laws of Mo., 1951, page 235, in absence of valid contract for work.

XXXXXXXXXXXX

JOHN W. DALTON



March 11, 1953

XXXXXXX

J. C. Johnsen

Honorable Newton Atterbury  
State Comptroller and  
Director of the Budget  
Capitol Building  
Jefferson City, Missouri

Dear Sir:

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

"I am attaching hereto a copy of a letter from E. J. McKee, Business Manager of State Hospital No. 1, Fulton, Missouri.

"In view of the facts as mentioned by Mr. McKee, should encumbrances and payments be made in favor of The Taylor Construction Company or the City of Fulton? Also, advise us if partial payments can be made as the work progresses on this contract, that is the 85% of the completed work, as provided on contracts made directly by the State."

The letter attached to your inquiry is quite lengthy and contains matters not pertinent to the present question. It may be summarized, however, by stating that the information therein contained discloses that the City of Fulton has entered into a contract for repairing, replacing and improving the city sewer and sewage disposal system for that city. It further appears that work is progressing under such contract, and that demand will shortly be made for a disbursement of state funds chargeable to the appropriation made under Section 10.380, Laws of Mo., 1951, p. 235.

The appropriation referred to reads as follows:

"State Hospital No. 1--repairing, replacing and improving the present sewerage and disposal system.--There is hereby appropriated out of the State Treasury, chargeable to the Postwar Reserve Fund, the sum of Thirty-seven Thousand Five Hundred Dollars (\$37,500.00), for the use of State Hospital No. 1, in taking care of the State's share for repairing, replacing and improving the present sewerage system and sewage disposal plant now being used cooperatively by Hospital No. 1 and the City of Fulton, Missouri, for the period beginning July 1, 1951, and ending June 30, 1953."

It appears from the terms of the appropriation that thereunder was appropriated the sum of Thirty-seven Thousand Five Hundred (\$37,500.00) Dollars to be used in paying a portion of the cost for repairing, replacing and improving the existent sewerage system and sewage disposal plant, which is used cooperatively by State Hospital No. 1 and the City of Fulton, Missouri. The appropriation covers the period beginning July 1, 1951, and ending June 30, 1953.

We are advised by the Director of Public Buildings that no contract is found in the files of that division relating to the contemplated work to be done upon the cooperatively used sewerage system and sewage disposal plant mentioned in the foregoing appropriation act. It, therefore, becomes of concern to the present inquiry to determine whether or not any disbursements may be made out of such appropriation in the absence of such a contract.

We direct your attention to the following portion of Section 22, Article IV, Constitution of 1945:

"\* \* \* The comptroller shall be director of the budget, and shall preapprove all claims and accounts and certify them to the state auditor for payment."

Also, Section 28 of Article IV, Constitution of 1945,

reading as follows:

"Withdrawals from treasury--limitations on authority to incur obligations--certifications by comptroller and auditor--expiration of appropriations.--No money shall be withdrawn from the state treasury except by warrant drawn in accordance with an appropriation made by law, nor shall any obligation for the payment of money be incurred unless the comptroller certifies it for payment and the state auditor certifies that the expenditure is within the purpose of the appropriation and that there is in the appropriation an unencumbered balance sufficient to pay it. At the time of issuance each such certification shall be entered on the general accounting books as an encumbrance on the appropriation. No appropriation shall confer authority to incur an obligation after the termination of the fiscal period to which it relates, and every appropriation shall expire six months after the end of the period for which made."

The foregoing constitutional provisions place the direct duty upon the Comptroller of determining the validity of any claim presented for approval and payment out of the state treasury. In making such determination the Comptroller must necessarily avail himself of all facts bearing upon the contractual obligation or other demand sought to be enforced.

It is true that Section 191.120, RSMo 1949, vests the naked legal title to the real property owned by the state for the various institutions under the administrative control of such department in the Director of the Department of Public Health and Welfare. However, this does not preclude the necessity that such director comply with applicable statutory requirements with respect to repairing, rehabilitating or improving such real property.

We direct your attention to Section 8.070, RSMo 1949, relating to the duties of the Director of Public Buildings, reading as follows:

"To serve as consultant to department heads on construction and maintenance of buildings.--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, classrooms, 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."

(Underscoring ours)

The facts as indicated in your letter of inquiry, in the letter attached thereto from the business manager of State Hospital No. 1 and the information supplied this department by the Director of Public Buildings indicate a complete failure to comply with the cited statutory requirements relating to the expenditure of public moneys, under an appropriation for the repair, rehabilitation or improvement of public building.

#### CONCLUSION.

In the premises we are of the opinion that until such time as compliance be had with the various statutory require-

Honorable Newton Atterbury -5-

ments relating to the expenditure of public moneys for the repair, rehabilitation or improvement of public buildings owned by the state and a valid contract pursuant to such statutory requirements be entered into, no expenditure out of the state treasury can properly be made under the appropriation provided in Section 10.380, found Laws of Missouri, 1951, page 235.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Will F. Berry, Jr.

Very truly yours,

JOHN M. DALTON  
Attorney General

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