

MISSOURI DENTAL
BOARD:

Missouri Dental Board may employ
legal counsel.



May 29, 1953

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

Dear Sir:

Reference is made to your request for an opinion of this office which request reads as follows:

"We have received from the Missouri State Dental Board a requisition requesting payment of various items.

"One particular item which we question is the certification of a requested payment in the amount of \$553.10 for attorney fees for William Icenogle. We are attaching hereto a copy of Icenogle's statement of account. We question this payment first on the basis of the appropriation (see section 7.350, Appropriation Laws 1951 - 53) under heading "operations". This might be construed as payable under "other necessary expense".

"We particularly question this payment, however, due to the fact we feel probably your office should have either handled this work or at least made recommendations in regard to its handling.

"We are holding up this payment and request you give us a legal opinion as to the propriety of our paying the legal fee above mentioned."

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We will first consider your second inquiry which we understand to be whether or not the Missouri Dental Board has the authority to retain legal counsel to assist the board in carrying out their duties, such counsel being other than the Office of Attorney General. In other words, may the board contract the services of a private practicing attorney?

The provisions relating to the authority and duties of the Missouri Dental Board are found in Chapter 332, RSMo 1949, Section 332.290 provides for the creation of the board and authorizing the board to sue and be sued in its official name. Section 332.300 provides for the organization of the board once created. Section 332.310 specifically authorizes the board to employ legal counsel and reads in part as follows:

* * *The Board shall be authorized and empowered to employ and pay all necessary legal and clerical services whenever, in its opinion, the same is necessary; all necessary and reasonable traveling expenses of its counsel may be paid by the Missouri dental board when its counsel is absent from his office at the request of the board.
* * *

We note from the fee bill attached to your opinion request that the legal services contracted in this instance were in relation to an injunction proceeding. Section 332.250 authorizes an injunction proceeding to bar a person from the unauthorized practice of dentistry and provides that such action may be commenced, filed and maintained by the attorney general or by any prosecuting attorney or by the circuit attorney of the City of St. Louis in the name of the State of Missouri or "by the Missouri dental board in its own name." Since such a proceeding may be maintained by the board and by virtue of specific authority there can be no doubt of the power of the Missouri Dental Board to employ counsel as is in their opinion necessary to enable them to perform the duties imposed by statute.

You next inquire whether such services may be paid for under "operations" as contained in Section 7.350, Appropriation Laws 1951. Section 7.350 relating to the State Dental Board reads as follows:

"State Dental Board.-There is hereby appropriated out of the State Treasury, chargeable to the State Dental Board

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Fund, the sum of Twenty-four Thousand Six Hundred Dollars (\$24,600.00), for the use of the State Dental Board, for the payment of salaries, wages and per diem of the members, officers and employees; and for the general operating and other expenses; for the biennial period beginning July 1, 1951 and ending June 30, 1953, as follows:

"Personal Service:

Salary of Secretary \$3,600.00

"Operation:

General expenses including per diem of Board members, extra stenographic help, assistant secretary, communications, printing, binding, postage, travel within the state, insurance and premiums on bonds, stationery and office supplies, other necessary expense and Federal Old-Age and Survivors Insurance \$21,000.00

"Total from State Dental Fund \$24,600.00"

We are of the opinion that legal services such as here considered would fall within the term "other necessary expense" and would be properly payable out of operations as contained in the above provision.

CONCLUSION

Therefore it is the opinion of this office that the Missouri Dental Board may employ legal counsel as is, in their opinion, necessary to enable them to perform the duties imposed by statute and that the expenses incurred by such employment

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would be properly payable out of "operations" as that term is contained in Section 7.350, Appropriations, Laws, 1951.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. D. D. Guffey.

Very truly yours,

JOHN M. DALTON
Attorney General

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