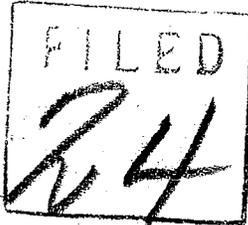


APPROPRIATIONS: Purposes for which appropriation of one million dollars made in Section 5.150, Appropriation Laws 1953-55 may be disbursed.



January 12, 1954

Honorable Phil M. Donnelly
Governor of Missouri
Executive Office
Jefferson City, Missouri

Dear Governor Donnelly:

Reference is made to your request for an official opinion of this department, based upon a letter received by you, the pertinent part of which reads as follows:

"At our conference this morning relative to the building program for the Missouri State School the question arose as to how the \$1,000,000.00 appropriation could be used in a building program.

"We submit the following questions which in our opinion should be submitted to the Attorney General for his clarification and official opinion.

"1. Can any part of the \$1,000,000.00 appropriated to the Missouri State School for the 'erection of a building or buildings suitable for housing 500 additional patients and equipment for such building' be used for any of the following necessary facilities:

- "(a) Construction of sewage disposal plant
- "(b) Water, gas and electrical service extension and connections within the grounds

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- "(c) Grading and site improvements, including landscaping, immediate adjacent to the building or buildings
- "(d) Construction of roadway, parking areas and sidewalks
- "(e) Remodelling and rehabilitation of existing buildings to be used in conjunction with any new buildings to be erected out of said appropriation
- "(f) In the event two or more buildings were erected could equipment be purchased out of this appropriation for all of said buildings.

The appropriation referred to is found as Section 5.150, Appropriation Laws, 1953-1955, and insofar as is pertinent to the matter under consideration reads as follows:

"Section 5.150. Missouri State School (Marshall and Carrollton).--There is hereby appropriated out of the state treasury, chargeable to the funds herein designated, for the use of the Missouri State School, for the payment of salaries and wages of the officers and employees; for the original purchase of property; for the repair and replacement of property; and for the operating and other expenses; for the period beginning July 1, 1953 and ending June 30, 1955.

"For the Missouri State School, payable from General Revenue Fund, as follows:

Personal Service:

Salaries of the superintendent, psychiatrists, psychologists, social workers, assistant physicians, dentists, steward, and other employees \$1,200,000.00

Additions:

Erection of a building or buildings suitable for housing 500 additional patients and equipment for such building 1,000,000.00

Repairs and Replacements:

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Labor, materials and supplies for repairing buildings, building equipment, furniture, office and operative equipment and structures other than buildings, and other necessary repairs and replacements 80,000.00."

As being appropriate to determining expenditures which may legally be made under this appropriation, we direct your attention to Section 21.260, RSMo 1949, reading 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. Every appropriation law shall distinctly specify the amount and purpose of the appropriation without reference to any other law to fix the amount or purpose."

We now group the questions proposed under Subparagraphs (a), (b), (c), (d) for consideration, inasmuch as it is our belief that the same general rules are applicable to the determination of the propriety of these expenditures.

It is noted in the letter of inquiry that all of the matters referred to in these subparagraphs, together with the other two, are said to be "necessary facilities." This, of course, presents a factual problem and one which we are unable to consider definitely in the absence of detailed plans and specifications of the proposed structure or structures. It is true, as has been held in *State v. Weatherby*, 168 S.W. (2d) 1048, that appropriation acts must be strictly construed, yet I think it is equally well-settled law that such acts must also be construed to effectuate the intent of the General Assembly in making the appropriation. We are here confronted with the problem of determining in a general way what improvements may be properly included within the purview of the phraseology used in the appropriation act of an appropriation for "erection of a building or buildings suitable for housing 500 additional patients and equipment for such building."

It is common knowledge that as the term "building" is used, particularly in statutes and appropriation acts, something more than merely four walls and a roof is contemplated.

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In addition to such a bare structure, adequate sanitary facilities, utility supply lines, landscaping and beautification of adjoining grounds, and vehicular and pedestrian traffic roadways may very well be contemplated. We think that in each instance the relationship of each of such items to the completed structure as a whole must be given due consideration. Therefore, it is our thought that the various facilities enumerated under the subparagraphs now under consideration, if shown to be a part of an integrated plan for the proposed new building, and if further found to be reasonably necessary for the efficient use of the structure for the purpose intended, are expenditures which may lawfully be made under the appropriation for the "erection of a building."

We think in this regard the provisions of Section 202.600, RSMo 1949, may be of some value in determining the validity of each of such proposed expenditures.

This section reads as follows:

"Object of school.--The objects of such school shall be to secure the humane, curative, scientific and economical treatment and care of the feeble-minded and epileptics, exclusive of dangerous insane epileptics, to fulfill which design there shall be provided, among other things, a tract of fertile and productive land in a healthful situation, with an abundant supply of wholesome water, sufficient means of drainage and disposal of sewerage, and sanitary conditions; and there shall be furnished among other necessary structures, cottages for dormitory and domiciliary uses, buildings for an infirmary, a schoolhouse and a chapel, workshops for the proper teaching and productive prosecution of trades and industries; all of which structures shall be substantial and attractive, but plain and moderate in cost, and arranged on the colony or village plan."

You will note that under the provisions of the Section quoted the statutory duty is specifically enjoined upon the Division of Mental Diseases to provide adequate supplies of water and to provide suitable sewage and disposal facilities. Furthermore, under the powers granted the Division of Mental Diseases in the same statute it could well be that as finally built, a plan for a group of buildings might be adopted. Certainly, should this be done, means for the passage of vehicles and pedestrians from one structure to another would be necessary for the efficient usage of the buildings.

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With respect to the question proposed under Subparagraph (e) it is our belief that no part of the appropriation may be used for the purposes mentioned in the letter of inquiry. Not only is the "remodelling and rehabilitation of existing buildings" something which is separate and distinct from the "erection of a building," but the General Assembly has, in the appropriation bill under the further provisions quoted, appropriated the sum of \$80,000.00 for the purpose, which money is to be used for operations of this type.

With respect to the question proposed under Subparagraph (f) of the letter of inquiry it is our belief that the very language of the appropriation act, as quoted supra, authorizes the usage of such portion of the one million dollars' appropriation as may be necessary for equipping such structures as may be built from the money therein provided.

The General Assembly has specifically authorized the erection of "building or buildings" and having further provided for equipping such new structures, it is our thought that the money may be so used whether one or more buildings be erected.

CONCLUSION

In the premises, we are of the opinion that the appropriation of one million dollars made under Section 5.150, Appropriation Laws 1953-55, may be used for the following purposes, or any one or more of them, if, and only if, such proposed expenditure is a part of an integrated plan for the facility and reasonably necessary for the efficient use of the completed structure;

- (1) The construction of a sewage disposal plant;
- (2) The extension of necessary utility facilities;
- (3) Site improvements, including landscaping immediately adjacent to the new building;
- (4) The construction of roadways, parking areas and sidewalks; and,
- (5) Equipment for any building or buildings constructed out of the appropriation.

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It is the further opinion of this office that no part of said appropriation of one million dollars may be used for the remodelling and rehabilitation of existing buildings or other structures.

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

Yours very truly,

JOHN M. DALTON
Attorney General

WFB:vlw