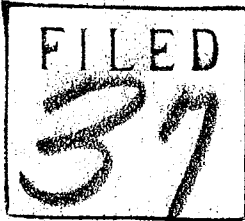


STATE PENITENTIARY:
INTERMEDIATE REFORMATORY:
STATE BOARD OF TRAINING
SCHOOLS:



Mr. C. R. Hardy
Auditor, Division of
Penal Institutions
Department of Corrections
Jefferson City, Missouri

Intermediate Reformatory cannot purchase foods for the state penitentiary commissary in lieu of payments for bread obtained from the penitentiary bakery; Board of Training Schools cannot purchase foods for the penitentiary commissary in lieu of payments on account of transfer of inmates to the state penitentiary; state penitentiary should continue to make said charges, the former to be deposited to the credit of the Working Capital Revolving Fund and the latter to the credit of general revenue.

September 6, 1955

Dear Sir:

Reference is made to your request for an official opinion, which request reads as follows:

"Since House Bill No. 377, passed by the Sixty-eighth General Assembly, abolished the Earnings Fund of the state penitentiary and the Earnings Fund of the Intermediate Reformatory, we are confronted with the following problems.

"The state penitentiary in the past several years has furnished bread from the penitentiary bakery to the Intermediate Reformatory which made payments regularly for the amount of its purchases to the Division of Penal Institutions and the payments received by the penitentiary were placed in the Earnings Fund of the Division of Penal Institutions and used for operational purposes.

"The Board of Training Schools has certain of its inmates, who are considered incorrigibles, transferred to the Intermediate Reformatory and the state penitentiary. The Board of Training Schools has consistently paid \$45 per quarter for each inmate transferred and the amounts credited to the Intermediate Reformatory Earnings Fund and the penitentiary Earnings Fund. There are other similar charges and payments which have heretofore been handled through the Earnings Fund of the penitentiary and the reformatory.

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"Since the penitentiary and the Intermediate Reformatory, exclusive of the farms which now come under the Working Capital Revolving Fund, shall operate exclusively from Revenue appropriations would the Intermediate Reformatory be permitted to purchase foods for the penitentiary commissary equal to the amount of bread purchased by the Intermediate Reformatory from the penitentiary?"

"Would the Board of Training Schools be permitted to purchase foods for the Missouri penitentiary commissary sufficient to off-set the quarterly payments due from the Training Schools for the inmates transferred to the Intermediate Reformatory and to the Missouri penitentiary?"

"If purchases of food from the departments for the penitentiary commissary are not permitted should the penitentiary continue the charge for bread furnished the Intermediate Reformatory and inmates transferred from the Board of Training Schools and collect for such items and turn the proceeds to the State Treasurer for credit to Revenue Fund?"

You first state that the penitentiary furnishes bread from the penitentiary bakery to the Intermediate Reformatory, which institution makes payments regularly for the amount of the purchases to the Division of Penal Institutions, and inquire whether in lieu of such payments the Intermediate Reformatory could purchase foods for the Missouri penitentiary commissary sufficient to offset payments due.

House Bill No. 377, enacted by the Sixty-eighth General Assembly, to which you refer, was signed by the Governor on July 14, 1955. It contains an emergency clause and, therefore, became effective on that date. Said bill does, as you state, abolish the penitentiary revolving fund and the penitentiary earnings fund, and creates a "Working Capital Revolving Fund," in the following language:

"Section 12. 5. The penitentiary revolving fund, the penitentiary earnings fund, the intermediate reformatory revolving fund, the intermediate reformatory earnings fund and the convicts' relief fund are hereby abolished and any moneys in these funds on the effective date of this act shall be immediately transferred to the working capital revolving fund."

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Section 12, paragraph 1, of said bill, provides that the gross or total receipts and income of all industrial operations of the institutions within the Department of Corrections shall be deposited in the state treasury to the credit of the "Working Capital Revolving Fund." said paragraph reads as follows:

"Section 12. 1. The gross or total receipts and income of all industrial and farm operations of the institutions within the department of corrections shall be paid into the state treasury and credited to the 'Working Capital Revolving Fund', which is hereby created."

Section 12, paragraph 2, provides that said fund shall be used only for certain purposes, as follows:

"The working capital revolving fund shall be used only for the establishment, maintenance, rehabilitation, expansion and operation of the prison industrial and farm programs and may be expended for:

"(1) The purchase of raw materials to be manufactured, processed or grown, including seed, fertilizer, farm animals and other necessary adjuncts to successful farm operation;

"(2) The purchase, repair and replacement of machinery and equipment;

"(3) The erection of new buildings and the repair and improvements of buildings used in such industrial or farm operations;

"(4) The payment of inmate labor as provided in section 34; and

"(5) All other necessary expenses and costs included in the manufacturing, growing, processing, handling and marketing of articles produced in the operation and administration of the industrial and farm programs of the division."

In view of these provisions of the act, we are of the opinion that the Intermediate Reformatory cannot purchase foods for the penitentiary commissary in lieu of payments for bread obtained from the penitentiary bakery. Gross or total receipts or income derived from the sale of bakery products would, of course, be receipts or income derived from

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an industry of an institution of the department as contemplated by Section 12, supra, which receipts or income are required to be placed in the state treasury to the credit of the "Working Capital Revolving Fund," and used only for the purposes specified. To sanction a procedure or transaction such as you have suggested would be to permit such receipts or income to be used for operations of the institution, which matter the General Assembly has seen fit to sustain by appropriations from the general revenue rather than from the earnings of the various industries of the department. Further, we find no authority for one institution to use its appropriated funds to make purchases for another institution, which matters are covered by a separate appropriation.

You next state that the Board of Training Schools has certain of its inmates, who are considered incorrigibles, transferred to the state penitentiary and, likewise, inquire whether the Board can purchase foods for the Missouri penitentiary commissary in lieu of payments which the Board makes for each inmate transferred to the penitentiary.

We wish to note that Section 219.230, RSMo 1949, authorizes the Board of Training Schools, subject to the approval of the Governor, to transfer any person committed to its custody to a state adult correctional institution. Section 219.260, RSMo 1949, authorizes the Board of Training Schools, upon requisition of the institution to whom custody of the child is transferred, to pay to such institution certain moneys. Said section provides, in part, as follows:

"* * *In the event of a transfer of any child under the provisions of section 219.230, the board shall, on requisition of the institution or agency to whom custody of said child is transferred, pay to such agency or institution the amounts paid to it under this section and section 219.270 for the period of such transfer."

In view of this statutory provision, we are of the opinion that such payments are to be made in cash as received, rather than in another medium. What has heretofore been said in regard to the Intermediate Reformatory making purchases of foods for the state penitentiary from its appropriated funds would, likewise, apply to the State Board of Training Schools, if appropriated funds are used in making payments to the state penitentiary on account of inmates transferred.

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CONCLUSION

Therefore, it is the opinion of this office that the Intermediate Reformatory cannot purchase foods for the state penitentiary commissary in lieu of payments for bread obtained from the penitentiary bakery nor can the Board of Training Schools purchase foods for the penitentiary commissary in lieu of payments as authorized by law to the state penitentiary on account of inmates transferred to said penitentiary.

We are further of the opinion that the state penitentiary should continue making charges for bread supplied to the Intermediate Reformatory and to requisition payments from the Board of Training Schools on account of inmates transferred to said penitentiary. The former payments to be deposited in the state treasury to the credit of "Working Capital Revolving Fund" and the latter to the credit of general revenue.

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

Yours very truly,

John M. Dalton
Attorney General