

APPROPRIATIONS: Section 13850 of House Bill 588 of the 68th  
General Assembly appropriates funds chargeable  
MISSOURI STATE to Post War Reserve Fund to Missouri State  
PENITENTIARY: Penitentiary for making additions, repairs and  
replacements, for constructing and equipping  
industrial buildings. Appropriation can only  
be used for purposes authorized, no part of same  
can be used to erect a barn on State Church Farm.



September 21, 1956

Honorable C. R. Hardy, Auditor  
Missouri State Penitentiary  
Box 900  
Jefferson City, Missouri

Dear Mr. Hardy:

This department is in receipt of your recent request for  
our legal opinion reading as follows:

"The Sixty-eighth General Assembly, by House  
Bill No. 588, Section 13.850, appropriated  
the sum of \$1,500,000.00 from the Post War  
Reserve Fund for the use of the Missouri State  
Penitentiary for Additions, Repairs and Re-  
placements: 'For constructing and Equipping  
Industrial Buildings'.

\* \* \* \* \*

"Fire destroyed a large feed barn on the State  
Church Farm, which contained feed for the  
dairy, on the 1st of this month. Replacement  
of the barn is very necessary and a barn is  
badly needed at the Algoa dairy, which is now  
operated under the Division of Farms.

"An opinion as to the legal use of funds ap-  
propriated under House Bill No. 588, Section  
13.850, to replace the dairy barn is requested;  
also, an opinion as to a barn for the Inter-  
mediate Reformatory dairy. Due to the urgency,  
your earliest possible consideration shall be  
appreciated."

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Reference is made in the opinion request to Section 13850 of House Bill No. 588 of the 68th General Assembly, which appropriates \$1,500,000.00 to the Missouri State Penitentiary, and reads as follows:

"There is hereby appropriated out of the State Treasury, chargeable to the Post War Reserve Fund, the sum of One Million Five Hundred Thousand Dollars (\$1,500,000.00), for the use of the Missouri State Penitentiary for Additions, Repairs and Replacements, for the period beginning July 1, 1955 and ending June 30, 1957, as follows:

Additions, Repairs and Replacements:

"For constructing and equipping industrial buildings \$1,500,000.00"

The first inquiry is whether or not a portion of the funds appropriated to the penitentiary by this section may be used to replace a barn recently destroyed by fire on the prison farm, known as the State Church Farm.

The second inquiry is whether a portion of the funds thus appropriated may be used to erect a barn at the dairy of the Intermediate Reformatory.

While there are many primary rules for the construction of statutes, it is believed to be sufficient for our present purpose to call attention to only three and follow them in construing Section 13850. The first rule has been given in the case of Fugh v. St. Louis Police Relief Ass'n., 179 SW2d 927, at l.c. 934, as follows:

"In construing said statutes the court must be guided by the primary rule of statutory construction, which is to ascertain and give effect to the intention of the lawmakers from the words used in the statutes and to adopt that sense which harmonizes best with the context thereof and promotes in the fullest measure the apparent policy and objects of the Legislature. State ex rel. Lentine v. State Board of Health, 334 Mo.

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220, 65 S.W.2d 943. See also, Sutherland on Statutory Construction, 2d Ed., Vol. 2, Section 363."

The second rule has been given in the case of State v. Hawk, 228 SW2d 785, at l.c. 788, as follows:

"\* \* \* It is fundamental that in interpreting Sec. 10484, supra, our primary purpose is to ascertain and give effect to the intention of the Legislature. If possible, the statutory intent should be determined from the words which have been used 'considering the language honestly and faithfully to ascertain its plain and rational meaning and to promote its object and manifest purpose.' \* \* \* Since no technical language is employed in the statute, the words used 'will be construed in their ordinary sense and with the meaning commonly attributed to them, unless such construction will defeat the manifest intent of the Legislature.' \* \* \*"

With these rules in mind we turn to Section 13850, supra, in an effort to determine the exact meaning intended to be given said section. In doing so, some questions are presented for consideration, such as: In making said appropriation was it the legislative intent that such amount was to be used generally for making additions, repairs and replacements of all buildings, and for constructing and equipping industrial buildings of the Missouri State Penitentiary, or was it the legislative intent that the appropriation was to be restricted and used only for making additions, repairs and replacements to industrial buildings, and for constructing and equipping such buildings of the penitentiary?

In this connection we call attention to the third rule of statutory construction referred to above, namely, that the express mention of one person, place or thing in a statute implies the exclusion of all others, and was discussed in the case of City of Hannibal v. Minor, 224 SW2d 598, at l.c. 605:

"\* \* \* There is a fundamental principle of construction which has been recognized and applied from time immemorial by our courts to such questions as we have here. It is embodied in the maxim: 'Expressio unius est exclusio

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alterius' which means that the express mention of one thing, person or place implies the exclusion of another. The application of this principle to the question before us merely serves to emphasize the fact that the City in this case was without authority to include in its ordinance 'automobile repair shops.'

Applying the principles laid down in the rules of construction previously mentioned, particularly the last one, to Section 13850, supra, in order to determine the legislative intent, it appears that if funds were intended for making additions, repairs and replacements of all buildings, as well as for constructing industrial buildings at the penitentiary, then such intent would have been more clearly expressed and would not have been left to conjecture or speculation, as would be true if such a construction were placed on the section.

It is noted that express mention is made of only one type or class of penitentiary buildings, namely, industrial buildings. Under the principles of the third rule of construction, it appears the context in which the terms are used indicates that any and all other types of penitentiary buildings are to be excluded therefrom. Therefore, the more reasonable construction, and the one more nearly in conformity with the apparent intent and purpose of the lawmakers, is that the act appropriates \$1,500,000.00 for the purpose of making additions, repairs and replacements to industrial buildings and for constructing and equipping industrial buildings of the penitentiary. No portion of such funds could be used for erecting a barn on the Church Farm, unless a barn could be classified as an industrial building within the meaning of the act, in which event such an expenditure from the appropriation could be legally made.

Since there is no indication that the words of the section were intended to be used in a technical sense, it is assumed that they have been used in their plain or ordinary sense.

While the words "industry" or "industrial" have not been used by themselves in the section, but in order to fully understand the words "industrial buildings" it is believed necessary to refer to them and their meanings.

The word "industry" is defined as any department or branch of art, occupation or business, especially one which employs much labor and capital and is a distinct branch of trade.

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The word "industrial" relates to manufacture or to the products of industry or labor.

We are unable to find any Missouri statute or court decision defining the term "industrial buildings." However, in the case of *Holly v. City of Elizabethton*, 241 SW2d 1001, said term was defined at l.c. 1003 as follows:

"[1] The statute defines an 'industrial building' to be a factory, mill, processing or fabricating plant. In as much as four walls, floors and roof cannot accurately be termed 'an industrial building', it follows that 'an industrial building' within the reasonable meaning of the Act is a building with such fixtures, machinery, etc. attached to, and becoming a part of, the building as will create a building that is equipped for the conduct of a manufacturing, milling, processing or fabricating business."

From this definition it appears that an industrial building, together with the attached fixtures and equipment, is a building to be used for the purpose of conducting some form of manufacturing or industrial business therein, and it implies that both capital and labor are to be employed in any of the activities which may be conducted in such building.

Would the word "barn" in its ordinary sense be considered an industrial building in the light of the definition given above?

Webster's New International Dictionary, 2d Ed., gives this definition of the word:

"Barn. A covered building used chiefly for storing grain, hay, and other farm products. In the United States a part of the barn is often used for stables, styes, etc."

It is readily seen that a barn is a building in which various kinds of farm products are stored and in which animals may be kept. No manufacturing or other industrial activities of any kind are carried on therein, and it is not a place where capital and labor are employed; consequently, the word "barn" cannot be classified as an industrial building.

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In view of the fact that the words of the section specifically authorize the appropriation to be used only for the purpose of making additions, repairs, replacements, and constructing and equipping industrial buildings, the term "industrial buildings," as used herein, does not include barns, and it is our thought that no portion of such appropriation can be used to replace a barn destroyed by fire on the State Church Farm.

An opinion of this department written for Colonel James D. Garter, Director of the Department of Corrections, on November 29, 1955, construed Section 13850 of House Bill 588, referred to above. It was concluded in said opinion that no part of the funds appropriated for the state penitentiary by said bill could be used to purchase equipment for the Intermediate Reformatory. It is believed the opinion fully answers your second inquiry, and a copy of same is enclosed for your consideration.

CONCLUSION.

It is, therefore, the opinion of this department that, under the provisions of Section 13850 of House Bill No. 588 of the 68th General Assembly, funds are appropriated and chargeable to the Post War Reserve Fund for use of the Missouri State Penitentiary in making additions, repairs, replacements, and for constructing and equipping industrial buildings. Said appropriation can be used only for the purposes authorized and no part of same can be used to erect a barn on the State Church Farm.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Paul N. Chitwood.

Yours very truly,

John M. Dalton  
Attorney General

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