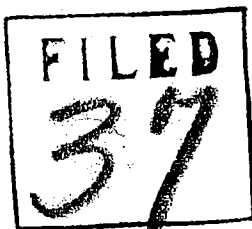


APPROPRIATIONS:  
PENITENTIARY:  
DEPARTMENT OF CORRECTIONS:

Use of funds appropriated in Section 1, House Bill No. 312, Sixty-ninth General Assembly, for "Additions, Repairs and Replacements" at penal institutions.



September 19, 1957

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

Dear Mr. Hardy:

This refers to your letter requesting an opinion of this office concerning the interpretation of certain provisions of House Bill No. 312, Sixty-ninth General Assembly, which request reads as follows:

"House Bill No. 312 of the Sixty-ninth General Assembly, an Act to appropriate money from the Second State Building Fund to the State Penitentiary and other state institutions, provides under Section 1, Lines 28 to 38, as follows:

'Additions, Repairs and Replacements:

'For remodeling of buildings, repairing of buildings, repairing and replacement of equipment, and equipping all buildings and grounds for the present State Penitentiary, present Women's Prison Buildings, Prison Farms, and Intermediate Reformatory, and any other necessary improvements, such repairs, replacements and remodeling and the priority of the same to be determined and the work approved by the Director of Public Buildings before payment.'

"An opinion is respectfully requested as to items that may, or may not, be purchased from the above mentioned appropriation:

1. May funds be used for constructing a new building or buildings?
2. What should 'repairs and replacements of equipment' include?

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3. Would this cover repair of motor equipment and purchase of new motor equipment for use in the 'Repairs and Replacement' work?

4. May funds be used for purchase of tools to perform the work to be done?

5. Would the purchase of new hospital equipment, new kitchen equipment, new office equipment, new garage equipment, new fire engines and equipment be permitted under this appropriation?

6. Would employment of skilled labor, to oversee remodeling and repairing work, be permitted and the employment of additional clerical force to handle such necessary work?"

With respect to the use of the funds in question for the construction of new buildings, we point out that the statutory provision which you quote contains nothing specifically authorizing the use of the funds for this purpose. Instead, it authorizes the use of the funds for remodeling, repairing and equipping buildings, without mentioning the construction of new buildings. There is nothing which could conceivably be contended to refer to the construction of new buildings other than the phrase "and any other necessary improvements"; and, considered in its context, it does not appear that this phrase should be so construed.

In the same connection, it should be noted that the provision of House Bill No. 312 which you quote is a reappropriation of funds originally appropriated in a law passed by the 68th General Assembly (Laws of Missouri, 1955, Extra Session, page 4). In the law passed by the 68th General Assembly, the caption to this provision reads "Repairs and Replacements". In House Bill No. 312, this caption was changed to read "Additions, Repairs and Replacements", but there was no change in the body of the provision for the purpose of authorizing "additions", except the substitution of the words "and equipping" for the word "to", so as expressly to authorize the purchase of new equipment.

Further, it will be noted that in Section 1 of House Bill No. 312, preceding the provision which you quote, there is a provision, under the caption "Additions", which expressly appropriates money for the construction of new buildings. In this respect, such section is the same as the corresponding section of the law passed by the 68th General Assembly; and it is in accord with the

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pattern followed throughout House Bill No. 312, and the laws passed by the 68th General Assembly dealing with the same subject, which was for each section to deal first with appropriations for the construction of new buildings and then with appropriations for repairs and replacements and miscellaneous items.

In the circumstances, it is the opinion of this office that the statutory provision which you quote cannot be construed to authorize the use of the funds appropriated thereby for the purpose of constructing new buildings.

We turn now to a discussion of factors to be considered in answering your other questions. The statutory provision which you quote authorizes the use of the funds appropriated thereby for "repairing and replacement of equipment, and equipping all buildings and grounds" for various penal institutions. It will be noted that "equipping" relates specifically to "buildings and grounds". The phrase "repairing and replacement of equipment" is not so definitely tied to "buildings and grounds". However, in the corresponding section of the law passed by the 68th General Assembly, the language was "repairing and replacement of equipment to all buildings and grounds"; and it is questionable, at best, whether there was any intention that the provision in House Bill No. 312 should have a different meaning in this respect.

In any event, the statutory provision in question, which appropriates money in the Second State Building Fund, is limited by, and must be construed in the light of, Section 37(a) of article III of the Constitution of Missouri, which creates that Fund (State ex rel. State Building Commission v. Smith, No., 81 S.W. 2d 613). Section 37(a), which was added to the Constitution by the amendment approved at the election on January 24, 1956, authorizes the issuance of \$75,000,000 in bonds for certain purposes and provides that the proceeds of the sale of the bonds shall be paid into the Second State Building Fund and shall be used only for the purposes for which the bonds are authorized to be issued (see Laws of Missouri, 1955, page 867). The purposes for which the bonds may be issued are stated as follows:

"\* \* \* for the purpose of repairing, remodeling or rebuilding, or of repairing, remodeling and rebuilding state buildings and properties at all or any of the penal, correctional and reformatory institutions of this state, the state training schools, state hospitals and state schools and other eleemosynary institutions of this state, and institutions of higher education of this state, and for building additions thereto and additional buildings where

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necessary, and for furnishing and equipping any such improvements."

In connection with repairing, remodeling, and rebuilding, the words "buildings and properties" are used, and these words, of course, must be given a somewhat broader meaning than "buildings" alone. However, it is believed that the rather vague and general term "properties" must be construed in the light of, and its meaning is limited by, its use in connection with the word "buildings" and the later reference to "any such improvements." Insofar as the purchase of furniture and equipment is concerned, the only authorization is in the last phrase which authorizes the furnishing and equipping of "any such improvements". Inherent throughout the language used in stating the purposes of the bonds is the concept that the bonds are to provide money for the rehabilitation and construction, and the furnishing and equipping, of buildings, and for items closely related or comparable thereto; and such was the common understanding of the bond program when the constitutional amendment was under consideration.

On the basis of the foregoing, it is our conclusion that the funds appropriated by the statutory provision quoted by you may be used for the purchase of new equipment for buildings, and that, while questions might arise concerning specific items, this would include generally hospital, kitchen, office, and garage equipment. However, we do not see how either the statute or the basic constitutional provision can be so construed as to permit the use of the funds for the purchase of a new fire engine and equipment.

With respect to the purchase and repair of motor equipment, and the purchase of tools, for use in making repairs, we do not regard such equipment and tools as being "equipment" or "properties" such as are contemplated by the constitutional amendment authorizing the bonds. It is our opinion, however, that the cost of such equipment and tools, or a portion thereof, may be properly regarded as a cost of the repair of buildings contemplated by the constitutional amendment and statute, and may be paid from proceeds of the bonds appropriated for that purpose. This necessarily involves a question of fact as to the extent to which the equipment and tools are to be used and expended in making such repairs. There may be instances in which such equipment and tools may be used both in making such repairs and in general operations of the penitentiary or where they may have substantial resale value when their use in making such repairs has ended. Such factors must be considered in determining whether, and to what extent, the cost of the equipment and tools may be paid from the bond proceeds as a cost of authorized building repairs; and the determination in each instance must depend upon the facts of the particular case.

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With respect to the employment of skilled labor and clerical employees in connection with repair and remodeling work and the payment of their salaries from this appropriation, we enclose a copy of an opinion furnished by this office to Truman L. Ingle, under date of October 15, 1943, in which the conclusion was reached that the salaries of employees performing services in connection with "repairs and replacements" and "additions" could be paid out of funds appropriated for those purposes. That opinion is equally applicable here.

CONCLUSION

It is the opinion of this office that funds appropriated by Section 1, House Bill No. 312, Sixty-ninth General Assembly, for "Additions, Repairs and Replacements" at penal institutions (1) cannot be used for the construction of new buildings, (2) can be used for the purchase of equipment for buildings, which would include generally hospital, kitchen, office, and garage equipment, (3) cannot be used for the purchase of a new fire engine and equipment, (4) can be used for the purchase or repair of equipment and tools for use in making repairs to buildings, to the extent that, on the basis of facts of particular cases, such expenditures can be classified as a cost of the building repairs, and (5) can be used to pay salaries of employees performing services in connection with repairs and remodeling.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John C. Baumann.

Yours very truly,

John M. Dalton  
Attorney General

JCB/ld/bi

Enc.