

WORKMEN'S COMPENSATION:
REHABILITATION:
APPROPRIATIONS:
COMPENSATION:
BOARD OF REHABILITATION:

Funds appropriated in Section 4.640 of House Bill No. 204, 69th General Assembly may not be used to pay the sum of \$2,500 each, per annum, to the several members of the Board of Rehabilitation under provisions of Section 287.143.

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October 21, 1957

Honorable Stephen J. Millett
Chairman
Board of Rehabilitation
Department of Labor and
Industrial Relations
Jefferson City, Missouri

Dear Mr. Millett:

This office is in receipt of a request for an opinion from you as follows:

"A legal question has arisen as to whether or not the individual members of the Board of Rehabilitation, which is a part of the Department of Labor and Industrial Relations, are employees of the Board of Rehabilitation so as to be eligible to receive the salaries provided by the 69th General Assembly in House Bill 182, approved by the Governor, and effective August 29, 1957 by virtue of the provisions in the appropriation of the bill entitled House Bill 204 Section 4.640 which appropriates \$15,000.00 or so much thereof as may be necessary for the use of the Board of Rehabilitation for the payment of salaries, wages, and per diem of employees thereof. House Bill No. 182 provides 'There shall be paid out of the Workmen's Compensation Fund, created under Section 287.710, for the duties performed by the several members of the Board of Rehabilitation under Section 287.141 and 287.142 the sum of \$2,500.00 each, per annum, payable monthly'.

"So we contend that the respective members of the Board of Rehabilitation are not only employees of the State but are also employees of the Board of Rehabilitation. We are re-

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questing an official opinion of your office as to whether or not the respective or several members of the Board of Rehabilitation are employees of the Board of Rehabilitation as a legal entity of the Department of Labor and Industrial Relations."

In answer to your request it is first thought necessary to examine the present law in regard to the Board of Rehabilitation. The rehabilitation law into which we must inquire here, is believed to be now comprised of Section 287.141, Cum. Supp. 1955 and Sections 287.142 and 287.143, which have been enacted by the 69th General Assembly. The first section mentioned provides for the creation, members, duties and benefits of the Board of Rehabilitation. Section 287.142 of the original law was repealed and reenacted and Section 287.143 was added in House Bill No. 182 of the 69th General Assembly, Section 287.143, House Bill 182, is as follows:

"1. There shall be paid out of the workmen's compensation fund, created under section 287.710, for the duties performed by the several members of the Board of Rehabilitation under sections 287.141 and 287.142, the sum of two thousand five hundred dollars each, per annum, payable monthly.

"2. All clerical, travel and other expenses incurred in connection with the administration of section 287.141 shall be paid from the workmen's compensation fund."

It must be noted that the last above section was enacted by the Legislature for the first time in the 1957 session and became a law August 29, 1957.

A search of House Bill No. 204, which is the appropriation bill, enacted by the 69th General Assembly fails to reveal any appropriation, other than Section 4.640, mentioned in your request letter, applicable to the payment of salaries under Section 287.143.

From a search of all of the appropriation bills it must be concluded that the only section possibly applicable for payment of the salaries in question is Section 4.640 as follows:

"There is hereby appropriated out of the State Treasury, chargeable to the Workmen's Compensation Fund, the sum of

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Fifteen Thousand Dollars (\$15,000.00)
or so much thereof as may be necessary
for the use of the Board of Rehabilitation
for the payment of salaries, wages
and per diem of employees thereof, for
the original purchase of property; for
the repair and replacement of property;
and for operating expenses including
travel within and without the state,
and other necessary expenses for the period
beginning July 1, 1957 and ending June 30,
1958."

This section was enacted as shown in the appropriation bill
in accordance with the executive budget for the State of Missouri
for the fiscal year 1957-1958, page 256, which is reproduced as
follows:

"DEPARTMENT-LABOR AND INDUSTRIAL RELATIONS
DIVISION-BOARD OF REHABILITATION-ADMINISTRATION

	1953-55	1955-57
Officers-Full Time.....	4	4
Employees-Full Time.....	1	2
Totals	5	6

FROM FUNDS AND EARNINGS

Appropriation 1955-57 Biennium	Expenditures 1955-56 Fiscal Year	Estimated Expenditures 1956-57 Fiscal Year	Total Expenditures 1955-57 Biennium		1957-58 Biennial Requests	1957-58 Requests	Governor Recommends 1957-58 Fiscal year
\$30,000.00	\$12,729.23	\$17,270.77	\$30,000.00	{ Personal Service..... Additions..... Repairs and Replacements. Operation..... }	\$15,000.00	-----	\$15,000.00
<u>\$30,000.00</u>	<u>\$12,729.23</u>	<u>\$17,270.77</u>	<u>\$30,000.00</u>	Totals.....	<u>\$15,000.00</u>	<u>----</u>	<u>\$15,000.00</u>

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By the express terms of 287.147, supra, the salaries are to be paid to the members of the board for their duties performed as members of the board. The funds to be used in accordance with that section, were to be appropriated out of the Workmen's Compensation fund. In subsection 2, it was provided that clerical, travel and other expenses, were to be appropriated out of the Workmen's Compensation fund. It will be noted that by the express language used, the payment was to be made to members of the board as members. Since the express terms are that they are to be paid as members, they cannot be paid out of funds for the board's employees.

The Supreme Court in the case of Nodaway County v. Kidder, 129 SW 2d 857, in respect to the employer and employees relation in public office at l.c. 859-860, states as follows:

"Appellant contends he may act in two different capacities at the same time and that compensation received in one capacity will not be treated as compensation received in the other. Appellant overlooks the fact that the existence of the two capacities, employer and employee, in the same individual is incompatible and is peremptorily prohibited by law."

Since the executive budget, quoted supra, shows that \$30,000.00 was expended or estimated to be spent in the 1955-57 biennium, before any provision was made for salaries to be paid to the members of the Board of Rehabilitation, it certainly cannot be believed to have been the intent of the Legislature that the \$10,000.00 required, should be taken out of this present \$15,000.00 appropriation. This money had been used entirely in the 1955-57 biennium under the old section 287.142. That section, although repealed, was reenacted as subsection 2 of 287.143 of House Bill No. 182.

Further examination of the appropriation law shows that the appropriation for the 1955-1957 biennium was couched in identical language and had the same section number in 1955 as Section 4.640. Of course that law being for a biennium, differed in the amount being \$30,000.00 instead of \$15,000.00 and being for the biennial period rather than for one year.

In view of the factual situation as set out, we think that it is best to quote from Article IV, Section 23 of the Constitution of Missouri, 1945, in which we quote in part as follows:

"* * * * Every appropriation law shall distinctly specify the amount and purpose of

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the appropriation without reference to any other law to fix the amount or purpose."

Also it is provided in Section 24 of that article that the Governor shall submit to the General Assembly a budget for the ensuing appropriation period containing * * * "a complete and itemized plan of proposed expenditures of the state and all its agencies, * * * " It is believed that after considering the above, it must be said that the Legislature did not appropriate out of the Workmen's Compensation Fund, the necessary \$10,000.00 to pay the several members of the Board of Rehabilitation the sum of \$2,500 each, per annum, as it had provided for by law in Section 287.143 of House Bill 182.

CONCLUSION

Therefore, it is the opinion of this office that funds appropriated in Section 4.640 of House Bill No. 204, 69th General Assembly, may not be used to pay the sum of \$2,500 each, per annum, to the several members of the Board of Rehabilitation under the provisions of Section 287.143, House Bill No. 182 of the 69th General Assembly.

The foregoing opinion, which I hereby approve, was prepared by my assistant, James W. Faris.

Yours very truly,

JOHN M. DALTON
Attorney General

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