

Opinion No. 321  
Answered by Letter  
by Mr. DeNeen

December 31, 1964

George A. Ulett, M.D.  
Director, Division of  
Mental Diseases  
722 Jefferson Street  
Jefferson City, Missouri



Dear Dr. Ulett:

This is in answer to your request of September 17, 1964, in which you ask the following question:

"The Division of Mental Diseases is considering expanding its staff development program.

"This proposed expansion would involve sending our present personnel to approved educational institutions for further training and education at full-time salary.

"Can the Division of Mental Diseases continue to pay full-time salaries to personnel on approved educational leave?"

Section 36.090 (5) dealing with staff training programs provides:

"To develop, in cooperation with appointing authorities and others, who come under the provisions of this chapter (State Merit System) training programs for employees in divisions of the service subject to this chapter:"(Insert ours.)

The above statute authorizes the establishment of a training program for employees under the Merit System. Section 191.070 makes the State Merit System applicable to employees of the Department of Public Health and Welfare of which the Division of Mental Diseases is a division. Thus a training program, as authorized by Section 36.090 (5), may be developed for the employees of the Division of Mental Diseases, who are subject to the merit system.

The next question is whether or not the payment of state funds as salary to personnel under a training program plan which would send such persons to approved educational institutions is a constitutional use of public funds.

Article III, Section 38, (a) dealing with the granting of public money to private persons provides:

"Limitation on use of state funds and credit - exception - public calamity - blind pensions - Old-age assistance - aid to children - direct relief - adjusted compensation for veterans - rehabilitation - participation in federal aid.  
The general assembly shall have no power to grant public money or property, or lend or authorize the lending of public credit, to any private person\* \* \*".

Article III, Section 39 (1) (2), relating to the powers of the General Assembly to appropriate public money provides:

"Limitation on power of Assembly. The general assembly shall not have power:

"(1) Use of state credit in aid of others  
To give or lend or to authorize the giving or lending of the credit of the state in aid or to any person, association, municipal or other corporation; \* \* \*

"(2) Guarantee of liabilities of others -  
To pledge the credit of the state for the payment of the liabilities, present or prospective, of any individual, association, municipal or other corporation;

In State ex rel. Dalton v. Land Clearance for Redevelopment Authority, 364 Mo. 974, 270 SW2d 44, the above three constitutional sections were discussed by the Missouri Supreme Court. In this case the Missouri General Assembly had passed a law which authorized the Redevelopment Authority to condemn and pay landowners of blighted land areas just compensation for their buildings and land. The Redevelopment Authority would then clear the land of all structures and resell the land to other private individuals at a loss. It was unsuccessfully contended in this case that the reselling of the condemned land at a loss to private individuals violated the constitutional prohibitions against giving or lending public funds to a private individual. The Supreme Court of Missouri denied this contention in the following words, l.c. 53:

"\* \* \* The great weight of authority is that there is no private grant when land is cleared for the purposes herein contemplated and is thereafter sold at a loss, but for its then fair value. [citing cases]. In all of these cases it is pointed out that the primary purpose of a redevelopment project is a public purpose, and that any benefits to private individuals are merely incidental to the public purpose. \* \* \*"

Thus an expenditure of public money must be primarily for a public purpose. The employees of the Division of Mental Diseases who would receive a full time salary while attending an approved educational institution under a staff training program contemplated by Section 36.090 (5), supra, are receiving only an incidental benefit from the additional education which they receive. The primary benefit of an adequately trained and educated staff is received by the patients of the state hospital. That the primary purpose of the staff training program is a public purpose is also demonstrated by the enactment of Section 36.090 (5) by the Missouri General Assembly and the undeniable fact that a properly trained mental disease staff will primarily benefit this state in rendering more proficient services and improving the health and welfare of the citizens of Missouri.

The purposes of the Constitutional provisions, supra is not to prevent expenditure of public moneys which benefits private persons if a public purpose is to be served. Thus, in the case of State ex rel. State Industrial Home for Girls vs. Pike County, 144 Mo. 275, 45 W.W. 1096, the Supreme Court approved the use of public funds to provide a home for delinquent girls. Although the young girls received an incidental benefit of food, shelter, and clothing, the primary purpose of the girls' home was a public purpose and thus public funds were properly used.

In the case of State ex rel. King v. Board of Trustees of Firemen's Pension Fund of Kansas City, 184 S.W. 929, 192 Mo. App. 583, the Missouri Supreme Court stated at page 933:

"\* \* \*It is a fundamental principle of the law of this state that public money shall not be paid to a private individual for something wholly disassociated from the interests of the public itself. \* \* \*"

A staff training program would not be wholly disassociated from the interest of the public.

On the contrary, an adequately trained staff is essential for an effective and efficient mental health program, to serve the public interest.

The Missouri courts have also repeatedly stated that a statute such as Section 36.090 (5) dealing with staff training programs will not be held unconstitutional unless the statute clearly and undoubtedly contravenes some constitutional provision, Hickey et al. vs. Board of Education of St. Louis et al., 256 SW2d 775, 778 [8-12]. We are of the opinion that the payment of public funds such as salary to carry out the provisions of Section 36.090 (5) do not contravene the Missouri Constitution.

The next question is whether or not the words "training program" would permit training at approved educational institutions. Section 1.090 relating to the interpretation of statutes provides:

"Words and phrases shall be taken in their plain or ordinary and usual sense, but technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import."

The words "training program" are used in their plain and ordinary sense. "Training" is defined in Webster's New International Dictionary 2nd Edition, Unabridged, as "providing technical or professional instructions usually with practice under supervision; as a training school for nurses or actors."

Therefore, interpreting the words "training program" in their plain and ordinary sense, we are of the opinion that an educational institution could be a part of a training program for technical or professional instruction when appropriate.

Naturally, educational institutional instructions would require the payment of fees, supplies, books and tuition.

Section 33.170 RSMo 1959, relating to appropriations provides:

"No claim or account shall be preapproved by the comptroller, nor shall any warrant be paid by the state treasurer, unless the money has been previously appropriated by law nor shall the whole amount drawn for or paid under any one head, ever exceed the amount appropriated by law for that purpose."

Section 33.170 RSMo 1959, therefore requires an appropriation which would authorize expenditures for fees, supplies, books

and tuition connected with a training program.

All employees who qualify and are selected to participate in the training program at an educational institution should be limited to courses which are directly related to the training of employees in the performance of his duties with the state. Section 36.090 (5) provides only for "training programs". This implies that the educational courses must directly train the employee in the performance of his work for the state. The length of the educational training program must also be reasonably related to the amount of training necessary to carry out the duties assigned to the employee on behalf of the state.

Lastly, the necessary rules and regulations which determine what expenses are to be paid in each case shall be established by the personnel director of the State Merit System in cooperation with the appointing authority (Director of the Division of Mental Diseases) as provided in Section 36.090 (5) supra. The appointing authority shall also seek the advice of the Mental Health Commission in the training of the personnel as provided in Section 202.031 (6) 1, we quote:

"The Commission shall advise the Director of the Division of Mental Diseases as to all phases of professional standards including patient care and training of personnel \* \* \*".

Very truly yours,

Thomas F. Eagleton  
Attorney General