

APPROPRIATION: House Bill No. 659, 57th General Assembly, affecting the Commission for the Blind discussed.

May 22, 1933.



Hon. Forrest Smith,
State Auditor
Jefferson City, Mo.

Dear Sir:

On May 17, 1933 your office requested an opinion from this department as follows:

"In H.B. 659, Sec. A 2, there is created for the Commission of the Blind an Industrial Fund and in Sec. A 3 there is appropriated from the State Treasury chargeable to this fund \$350,000 for the payment of wages, etc.

Have we authority to transfer funds from the Blind Pension Fund to the Industrial Fund?

In Sec. A 4 there is created a Revolving Fund.

Would the Commission be allowed to pay wages at their Plant from this Fund, or is the Revolving Fund limited to purchase of raw materials alone?"

In answer to your first inquiry, it is the opinion of this department that you do not have authority to transfer funds from the Blind Pension Fund to the Industrial Fund, because House Bill No. 659 provides:

"Section A2. There is hereby created a fund to be known as the Commission for the Blind Industrial Fund and there shall be paid into the state treasury to the credit of such fund all money received by the Commission for the Blind in the way of donations and contributions from all sources."

"Section A3. There is hereby appropriated out of the state treasury, chargeable to the Commission for the Blind Industrial Fund, for the payment of wages and commissions of blind workers, salaries of sighted superintendents, operators and assistants and miscellaneous operative expense for the years 1933 and 1934 the sum of Three Hundred and Fifty Thousand Dollars (\$350,000.00)."

In Section A2 of said House Bill quoted above the Legislature created a fund known as the Commission for the Blind Industrial Fund, and provided that it should be composed of all moneys received by the Commission for the Blind in the way of donations and contributions. That section is not ambiguous and nothing therein contained would warrant the assumption that the Legislature intended a transfer of funds from the Blind Pension Fund to the Industrial Fund.

Section A3 uses language customarily used by the Legislature in the appropriation of moneys out of a certain fund. Perhaps this language is not as clear as it could be, but it is language that has been used by legislators for many years, and its meaning by reason of such constant and universal usage is definite. Section A3 means that the Legislature appropriates out of the Commission for the Blind Industrial Fund in the State Treasury \$350,000 for the payment of wages, of blind workers, salaries of sighted superintendents, operators and assistants and for miscellaneous operative expenses; there is nothing, therefore, in said section, from the language used, that would warrant an assumption that the Legislature intended that the fund there mentioned or referred to was to be augmented by moneys to be taken from the Blind Pension Fund.

Although in your letter you have not stated the fact to be, yet we understand from your Blind Pension Clerk that the fact is that the Commission for the Blind Industrial Fund referred to in said House Bill No. 659 is grossly inadequate and will continue to be grossly inadequate to furnish any such amount as \$350,000. It is our opinion that such extrinsic fact makes no material difference in the answer heretofore given for the reason that under Sec. 19 of Article X of the Constitution of Missouri it is provided:

"No moneys shall ever be paid out of the treasury of this state or any of the funds under its management except in pursuance of an appropriation by law;***"

It is therefore our duty to construe the appropriation bill from the words of the statute itself, without the aid of extrinsic evidence, unless the statute is ambiguous and we do not find in the language of the statute here under consideration any ambiguity.

It might be argued possibly that a latent ambiguity exists in that the Legislature is not presumed to have made a useless appropriation and from extrinsic facts we are able to ascertain that the appropriation made in Section A3 is useless in view of the fact that no moneys are available through donations and contributions, but this argument must fail in that the Legislature could have very readily anticipated that certain cities of the State of Missouri might contribute moneys to such fund, as well as individuals, and meant as the language itself says: that if such amount of money as \$350,000 was donated, then in that event, such amount could be used for the purposes there named.

Furthermore, by no method of construction could it be ascertained that the Legislature intended the \$350,000 mentioned in Section A3 to be taken from the Blind Pension Fund, since the Blind Pension Fund is not mentioned in said sections, and it would be just as plausible to assume that the Legislature intended to take \$350,000 from the General Revenue Fund or any other fund as to assume that it intended such moneys to be obtained from the Blind Pension Fund.

In answer to your inquiry #2, it is our opinion that the Revolving Fund mentioned in Section A4 of said House Bill is limited to purchases of raw materials alone. Section A4 provides:

"There is hereby appropriated out of the state treasury, chargeable to the Blind Pension Fund the sum of One Hundred Thousand Dollars (\$100,000.00) for the purpose of creating a fixed capital for a revolving fund, to be known as the Commission for the Blind Revolving Fund, out of which shall be purchased raw materials to be used to make various and sundry articles and products to be sold and the proceeds therefrom as and when collected to be deposited in the state treasury to the credit of such Commission for the Blind Revolving Fund."

Again we have a section, which so far as the purposes of the Revolving Fund is concerned, is unambiguous. The section clearly states that the Revolving Fund shall be used for the purchase of raw materials to be used to make various and sundry articles and products to be sold, and to permit said fund to be used for any other purpose would be in direct contravention of the section of the Constitution heretofore referred to (Sec. 19, Art. X of the Missouri State Constitution), but there is a valid question relative to the meaning of the word "proceeds" as used in Section A4. In other words, although it is clear that the \$100,000 Revolving Fund can only be used to purchase raw materials, yet is it clear that the total moneys collected from the articles and products to be sold after said raw materials are made into completed articles and products are to be deposited in the State Treasury back to the credit of the Commission for the Blind Revolving Fund? That is to say, does the word "proceeds" mean total proceeds, or net proceeds, after labor has been deducted therefrom?

In order to answer this interrogatory it is necessary to look at the entire bill. Section 1 appropriates \$137,854 out of the Blind Pension Fund for certain specific purposes, none of them being for labor of blind persons working on the raw materials mentioned in Section A4. Section A1 appropriates a certain amount of money for the benefit of a person named therein, and this, of course, does not provide any money for the payment of the services of the blind persons who make the completed articles from the raw materials purchased from the Revolving Fund mentioned in Section A4. Section A2 has hitherto been discussed and it in no way provides for wages of such blind persons before mentioned. Section A3 has been discussed and from the information obtained from your office, it is clearly shown that there will be no money available under Section A3 to pay any blind workers.

Under the above circumstances the appropriation of \$100,000 for the purchase of raw materials would be a futile and useless appropriation had not the Legislature intended that the blind persons making the completed articles should be paid for their labor. So then in order to carry out that intention of the Legislature, we construe the word "proceeds" to mean net proceeds after deducting the cost of labor therefrom.

In other words assume that \$5,000 was taken out of the Revolving Fund for the purchase of \$5,000 worth of materials to be used by blind workers in the construction of articles, etc. to be sold---when those articles are sold, the amount of \$5,000 should be returned to the Revolving Fund and from the difference between the \$5,000 and the amount that the completed articles are sold for the blind workers should be paid, and if any profits remain, such profits, if any, should be deposited in the state treasury to the credit of the Revolving Fund.

While it is true that the above construction is not made in pursuance to the strict letter of the language used, yet it is made in pursuance to the object of the bill itself and is in line with the following authorities that hold that a legislative enactment should be construed in the light of its spirit and purpose and so as not to make any provision of it absurd or useless.

Fanny v. State, 6 Mo. 122;
E.R. Darlington Lumber Co. v. Mo. Pac. Ry. Co.,
116 S.W. 530, 216 Mo. 658;
Rutter v. Carothers, 122 S.W. 1056, 223 Mo. 631;
Stack v. General Baking Co., 223 S.W. 89, 283 Mo. 396.

Yours very truly,

POWELL B. MCHANEY,
Assistant Attorney General

APPROVED:

Attorney General

PBM:AH