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APPROPRIATION:  
MISSOURI COMMISSION FOR THE BLIND: )

112637  
Section A1 discussed.  
42 11 20 1933  
L. H. Smith

October 2, 1933.

10-3



Hon. Forrest Smith  
State Auditor  
Jefferson City, Missouri

Dear Mr. Smith:

We are in receipt of the following communication from you:

"Section A-1, Page 138, Missouri Laws 1933, under MONEY FOR USE AND BENEFIT OF COMMISSION FOR THE BLIND, there is an appropriation of \$2400 for the purpose of paying the tuition and expenses of Leonard Dowdy to Perkins Institute.

- Q.1. Will you please advise whether this \$2400 should be taken from the \$38,832 appropriation under 'Operation' above or whether it is an additional appropriation over and above the total of \$137,854 as shown in Section 1?
- Q.2. In the appropriation as shown in Section 1, has the Eleemosynary Board the right to take from the \$39,832 as shown in 'Operation' any amount to assist the Board of Health in operating the Trachoma Hospital at Rolla, Missouri?"

We dispose of your questions in the order asked.

The appropriation act relative to the Commission for the Blind is found at pages 137-138, Laws of Missouri, 1933, said act consisting of two sections and five sub-sections. You inquire

concerning Section A1, which reads as follows:

"MONEY FOR TUITION OF LEONARD DOWDY AT PERKINS INSTITUTION.--There is hereby appropriated out of the state treasury, chargeable to the fund for the blind commission, the sum of Twenty-four Hundred Dollars (\$2400.00) for the purpose of paying the tuition and expenses of Leonard Dowdy, Junior, of Sedalia, Pettis County, Missouri at Perkins Institution, Watertown, Massachusetts, the said Leonard Dowdy, Jr. being blind and deaf and there being no institution in the State of Missouri for the education and training of blind and deaf persons. Such funds shall be expended under the supervision of the Commission for the Blind."

We quote parts of other sections and sub-sections, to-wit:

Section 1, page 137, in part provides:

"For the purposes expressed in chapters 50 and 51 Revised Statutes, 1929, there is hereby appropriated out of the state treasury, chargeable to the blind pension fund, for the use and benefit of the commission of the blind, the following amounts for the specific purposes expressed herein:"

Section A2, page 138, in part provides:

"There is hereby created a fund to be known as the Commission for the Blind Industrial Fund etc."

Section A3, page 138, in part provides:

"There is hereby appropriated out of the state treasury, chargeable to the Commission for the Blind Industrial Fund, etc."

Section A4, page 138, in part provides:

"There is hereby appropriated out of the state treasury, chargeable to the Blind Pension Fund etc."

Section 2, page 139, provides in part:

"There is hereby appropriated out of the state treasury, chargeable to the blind pension fund etc."

You will note that Sections 1 and 2, and A4 appropriate money chargeable to the blind pension fund. Section A2 creates a fund known as the Blind Industrial Fund, and Section A3 appropriates money chargeable to such fund. Section A1 (of which you inquire) appropriates \$2400, chargeable to the fund for the blind commission. Nowhere in the act is a fund for the blind commission created. The question, then, to be determined is if said \$2400 may be paid out of the \$39,832 under "Operation", Section 1, as no fund for the blind commission exists.

It is our opinion that the \$2400 item shall not be paid or taken from the \$39,832, under "Operation", Section 1, supra. In this connection it seems that the General Assembly made a useless appropriation when it appropriated \$2400 out of the fund for the blind commission when such fund does not exist or was not created.

Section 19, of Article X, page 144, of the Constitution of Missouri provides in part:

"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;"

In State ex rel. Long v. Auditor, 37 Mo., 1. c. 90, the Supreme Court of Missouri said:

"By law every warrant must be drawn on a specific fund."

In a opinion to you of June 7th, 1933, written by Edward C. Crow, Assistant Attorney-General, "appropriations" were fully discussed, and a reading of that opinion will give the reason sustaining our conclusion. We, therefore, will not lengthen this opinion by reciting herein sections of the statute and cases that hold that no moneys shall be paid out of the treasury of this State or (out) of the funds under its management, except in pursuance of an appropriation by law.

On September 11th, 1933, an opinion was written to you by W. W. Barnes, Assistant Attorney-General, which answers the identical question asked in your second question. Said opinion held:

"In view of the provisions of the Constitution and the decisions of our Supreme Court, this department is of the opinion that the State Auditor would have no authority to issue a warrant to the State Board of Health and charge it to the general operating expense of the Commission of the Blind."

Both of the opinions mentioned above were mailed to your Department, consequently we are not attaching hereto copies of same. If, for any reason, you do not have these in your files, please advise, and copies will be forwarded to you.

Yours very truly,

James L. HornBostel  
Assistant Attorney-General.

APPROVED: \_\_\_\_\_

ROY McKITTRICK  
Attorney-General.

JLB:EG