

APPROPRIATION: Section 7 of the Appropriation Act of 1943,
KOCH HOSPITAL: Laws of 1943, Page 22 and 23, and Section
St. Louis, Mo: 15181, Revised Statutes of Missouri, 1939,
construed.

March 22, 1944



Department of Public Welfare
City of St. Louis
St. Louis, Missouri

Attention: Honorable Henry S. Caulfield
Director of Public Welfare

Dear Sir:

We are in receipt of your request of this department
for an opinion of date, February 11, 1944, which request
reads as follows:

"As Director of Public Welfare for
the City of St. Louis, I am the head
of the Department of Public Welfare
and have general supervision over the
hospitals and institutions owned and
operated by the City of St. Louis.

"Included among these is the Robert
Koch Hospital, the Isolation Hospital,
the City Hospital (Max C. Starkloff
Memorial), and the Homer G. Phillips
Hospital. The Robert Koch Hospital
is operated exclusively for tubercular
patients, the Isolation Hospital for
contagious disease patients, and the
City Hospital and Homer G. Phillips
Hospitals are general hospitals.

"The Koch Hospital is located in St.
Louis County, remote from the City.
Largely because of this remoteness,
there is a shortage of help at the
Koch Hospital and because of this,
there is grave difficulty in taking
care of all of the tubercular patients
at the Robert Koch Hospital proper.
Some must be cared for at the Isola-
tion Hospital, and others at the City

and Homer G. Phillips Hospitals. They are being given excellent care at Isolation, City, and the Homer G. Phillips Hospitals, and the physicians resident at Koch visit them there and see that they get proper attention.

"We ask your Department for an opinion of the following question: Assuming that all of the persons who are isolated with the disease of tuberculosis, or under observation for said disease, are admitted to the Koch Hospital, but, on account of the exigencies above described, or other difficulties as to hospitalization, a portion of such patients are placed in other institutions maintained by the City, as charges of the Koch Hospital, will the City of St. Louis have the right to request it be paid, under Section Seven of the Appropriation Act, Laws Of Missouri, 1943, for the weekly keep of such patients if they are actually hospitalized in other City institutions as aforesaid?"

At the outset, we wish to set forth verbatim, Section 7 of the Appropriation Act of the 62nd General Assembly, which is found at Page 22 and 23, Laws of Missouri, 1943, which reads as follows:

"Charity patients of the St. Louis Tuberculosis Hospital.--There is hereby appropriated out of the State Treasury, chargeable to the General Revenue Fund for the period beginning January 1, 1943 and ending June 30, 1943, the sum of Seventy-five Thousand (75,000.00) Dollars, or so much thereof as may be necessary for the purpose of paying to the St. Louis Tuberculosis Hospital, under the provision of Article 2, Chapter 126, Revised Statutes of Missouri, 1939, the sum of Twelve Dollars and Fifty Cents (\$12.50) per week for each patient admitted to such hospital as a charity patient and maintained there in as required by Section 15181, of

Article 2, Chapter 126, Revised Statutes of Missouri, 1939, Provided the State Auditor shall not audit and the State Treasurer shall not pay any claim out of this appropriation to such hospital unless such claim has been examined and approved by the President of the Board of Managers of the State Eleemosynary Institutions."

The Section 15181, Article 2, Chapter 126, Revised Statutes of Missouri, 1935, referred to in the Appropriation Act, reads as follows:

"All tuberculosis hospitals owned and operated by any city under special charter shall receive the same support for charity patients therein as is now provided for charity patients in county tuberculosis hospitals under the provision of this article. The director of the department of public health of such city shall make a report to the city treasurer once per month giving the names, addresses, and hospital numbers of charity patients in such hospital and the amount necessary for the state to pay. The treasurer of the board shall issue a voucher to the state auditor giving this information and the auditor shall draw his warrant on the state treasurer for the amount shown by such statement and the state treasurer shall pay said warrant to the treasurer of said city, who shall deposit and credit the same to the credit of such hospital for the support of such charity patients, and for no other purpose. Every such hospital shall, so long as the state shall pay not less than twelve and one-half dollars per week per patient for the support of charity patients therein, receive patients from any county in this state in which case every such county shall pay to such hospital the difference between the sum of twelve and one-half dollars per week per patient, and the cost of the care and

support of such patient in such hospital, such cost not to exceed the per capita cost, for the year next preceding, for the care and support of patients in the state sanitarium at Mt. Vernon.

The vital question presented by your request is, in our view, whether or not patients which are admitted to the Koch Hospital must actually be housed under the roof of such hospital before the sum of \$12.50 per week may be approved by the Board of Managers of the State Eleemosynary Institutions, and charged against the Appropriation of \$75,000.00, provided for in Section 7 of the Appropriation Act, *supra*, through the procedure outlined in Section 15181, Revised Statutes of Missouri, 1939, *supra*.

For the purpose of reference, we herewith quote Section 46, Article 4 of the Constitution of Missouri as follows:

"The General Assembly shall have no power to make any grant, or to authorize the making of any grant of public money or thing of value to any individual, association of individuals, municipal or other corporation whatsoever: Provided, That this shall not be so construed as to prevent the grant of aid in a case of public calamity."

Likewise, we call attention to the case of State ex. rel. City of St. Louis Vs. Seibert, 123 Missouri, 424, where the issue was the validity of a grant to the St. Louis insane asylum, not a State institution. Argument was made that the grant through an appropriation by the Legislature was prohibited by the Constitution of Missouri. The Court in that case had this to say on page 429:

"It may be stated as a generally accepted principle of law that the Legislature with all its plenary powers, regardless of constitutional restrictions and limitations, has no power to raise money by taxation, or appropriate it for purely private purposes; but to insure against an attempt to do so, the constitution in express and positive terms, deprives it of such power by section 46, *supra*. Loan

Association v. Topeka, 20 Wall, 658. If the appropriation complained of had been made for the support of the insane asylum of St. Louis, there could be no doubt of its unconstitutionality.

"That the support of the indigent insane is an object universally recognized as ascharity, can not be questioned. That public money may be applied to the support of that class of unfortunate citizens, is recognized in the liberal support given our public institutions for the insane, as well as by the constitution itself.

* * * * *

"* * * * * The right to appropriate money to a public purpose follows legitimately from the right to tax for the same purpose. The taxing power of the general assembly is only limited, in its objects, to public purposes. If the power to appropriate the money raised by taxation be not prohibited in express terms, or by fair implication, it must be held to exist. And so we think the constitution should be read.

* * * * *

"* * * * * There is no provision that all charity shall be dispensed through the state institutions. Most thoroughfares of the state and in St. Louis, and numbers of the insane from other parts of the state necessarily find their way there. Shall these unfortunates be cared for, at the expense of the state, or turned into the streets to live or die as they may?

"But a private corporation or individual may be the recipient of the funds of taxation, provided that the use be a public one.* * * * *"

Thus, we see from the reading of the excerpt above set forth from the Seibert case that the court ruled that the ultimate grantees were the inmates, and disbursements through a municipal corporation would not invalidate the appropriation.

We feel it is far to assume that the Legislature was mindful of Section 46, Article IV of the Constitution as well as the interpretation that the Supreme Court of Missouri had placed upon a similar appropriation act in the Seibert case. Therefore, if we construe Section 7 of the 1943 Appropriation Act in the light of the Seibert opinion, then it is our view that the Legislature, when they stated in the Appropriation Act in part as follows: " * * the sum of \$75,000.00, or so much thereof as may be necessary for the purpose of paying to the St. Louis Tuberculosis Hospital, * *" which is, as we understand, the Koch Hospital, intended by such wording that the money should be given to the governing body of the hospital and by intendment the governing body of said hospital was to be the disbursing agent of the ultimate grantees (the indigent persons infected with tuberculosis) who were the recipients of such funds provided for in the appropriation. It will also be noted in the Appropriation Act there is contained this wording, " * * the sum of Twelve Dollars and Fifty Cents (\$12.50) per week for each patient admitted to such hospital as a charity patient and maintained therein as required by Section 15181, of Article 2, Chapter 126, Revised Statutes of Missouri, 1939, * * *"

It is our view that through this reference it was the intent of the Legislature that because of the fact that public money was being appropriated the act had to be and was for a public purpose, and the full purpose of the appropriation being to provide funds to defray, in part, the expense incident to caring for that general class of persons who were unfortunate in having contracted the disease of tuberculosis. Therefore, through the reference to Section 15181, supra, the Legislature was referring to all of that class who were being treated as charity patients and in a state of isolation by the City of St. Louis rather than intending to incorporate Article 2, Chapter 126, R. S. Mo. 1939, in the Appropriation Act.

Upon reading the opinion request, we find that the Director of Public Welfare states that it is the intention and belief that only those persons which have been admitted and isolated by the governing body of Koch Hospital are to participate under the Appropriation Act. This being the case, it is our view that so long as the City of St. Louis conforms to the provisions of Article 2, Chapter 126, then the persons who are being treated as tuberculosis patients are entitled to participate as recipients for the sum of \$12.50 per week per patient, and we say this even though such patients are

not physically within the walls of the Koch Hospital, for the tuberculosis patients have no control over the difficulties that confront the governing body of the Koch Hospital and the City of St. Louis.

Assuming for the purpose of argument that one ruled that the word "therein" as contained in Section 7 of the Appropriation Act as well as said word is contained in Section 15181, supra, and that the words "and hospital numbers of charity patients in such hospital * *" also contained in said section, were to be literally construed to mean that such patients had to be physically within the walls of such institution, then one would conclude that if the hospital should become destroyed or incapable of use, that such persons who were under treatment and observation for the disease of tuberculosis, as well as the City of St. Louis, would be precluded from the benefits of the appropriation as set forth in Section 7 of the Appropriation Act of 1943, supra, or, if the city, in the management and control of the Koch Hospital for the benefit of certain patients, then in that event the patients would be said not to be in such hospital. It is our view that this would be an absurd construction to be placed upon both the appropriation act and the Section 15181. We say this for the reason that the appropriation made by the Legislature is in itself a gift of public money from the State and for the purpose of benefiting primarily those persons who are unfortunate in having contracted the disease of tuberculosis, and further to benefit the public in that when said persons are placed in a state of isolation they do not subject those persons with whom they might come in contact otherwise if they were not provided with adequate facilities of hospitals.

Therefore, when we consider the constitutional prohibition together with the ruling of the Court in the Seibert case, it is our view that Section 7 should be given a construction more favorable to the recipients of said money, namely, those persons afflicted with the disease of tuberculosis rather than a very strict construction, which construction might challenge the constitutionality of the Appropriation Act and thereby preclude the indigent recipients from benefiting by the appropriation when such recipients, in truth and fact have no control over how they were being treated, and when in truth and fact such recipients are without question entitled to have the benefits of the appropriation of the character provided for in Section 7 of the Appropriation Act. The expenditure of public money of such class of persons is unquestionably for a public purpose even though such persons are cared for outside a state institution for the purpose of tubercular patients. (See the Seibert case, supra)

CONCLUSION

It is the opinion of this department that Section 7 of the Appropriation Act of 1943, Laws of 1943, pages 22 and 23, as well as Section 15181, Article 2, Chapter 126, R. S. Mo. 1939, shall be construed to mean that all persons who are admitted to the Koch Hospital and who are receiving the medical care afforded by the hospital, the hospital facilities, and are receiving treatment common to all persons admitted to the Koch Hospital, are entitled to the benefits made possible by the \$12.50 weekly payments to be derived from the Appropriation Act, regardless of whether such persons are actually physically within the walls of the Koch Hospital during the particular week in which said sum of \$12.50 is claimed by the Director of the Department of Public Welfare of the City of St. Louis.

Respectfully submitted,

B. RICHARDS CREECH
Assistant Attorney General

APPROVED:

ROY McKittrick
Attorney General

BRC:ML