

APPROPRIATIONS:

State University cannot spend appropriation in assisting another institution in caring for crippled children, but may care for them outside of Columbia.

December 9, 1935.



Honorable Leslie Cowan,  
Secretary, University of Missouri,  
Columbia, Missouri.

Dear Sir:

This will acknowledge receipt of your inquiry which is as follows:

"The University of Missouri has been requested by the Board of Trustees of the Georgia Brown Blosser Home for crippled children at Marshall, Missouri to pay from funds appropriated to the University by the 58th General Assembly of this State for Crippled Children's service, a part of the maintenance cost for the convalescent care of crippled children who have been in the University hospital at Columbia and have been or will be sent by the University hospital to the Blosser Home for convalescent care. The Blosser Home, which has a capacity of approximately forty patients, now has only three patients due to the fact that funds for the operation of the Home are extremely limited.

"The Blosser Home has been supported in the past entirely from the proceeds of its private endowment but these proceeds for 1935 will be about \$2000 less than the necessary expenses for 1935, and it appears that there will be a shortage of funds for 1936. Of course, as soon as general conditions improve and the proceeds from the endowment are sufficient to support the Home, there will probably be no need of further aid from the State.

"Since only children who have been treated in the Crippled Children's ward at the University hospital are eligible for admittance to and are admitted to the Blosser Home, the University officials are willing to have a portion of the State funds for Crippled Children work expended at the Blosser Home. The Crippled Children's ward at the University hospital is now full and though there are a number of children throughout the State who need and are entitled to aid according to the Crippled Children Act, they cannot be accepted by the University hospital until some of the present patients are either discharged or committed to the Blosser Home. Some of the children who have been at the hospital for some time and whose treatments are in an advanced stage could very well be taken care of by the Blosser Home, thus making room for new patients who are in great need of treatment but who cannot now be admitted to the University hospital in its present crowded condition. There is, at present, quite a large waiting list of such children.

"Before making any commitments to the trustees of the Blosser Home, the University first wishes to secure from your office an opinion on whether or not funds appropriated for the Crippled Children's service under the direction of the University can legally and properly be expended for the care and treatment of children committed to the Blosser Home.

"I desire to point out the fact that the administration of the Blosser Home is closely connected with the University Hospital at Columbia as it is provided in the will that new trustees for the Blosser Home are to be selected by the faculty of the School of Medicine at the University of Missouri. Furthermore I wish to call your attention to the fact that these children in the Blosser Home are under the complete medical charge of the faculty of the Medical

School of the University who pay regular visits to them and prescribe all treatments for them, also that the appointments of all nursing force are approved by the School of Medicine of the University.

"In order that you may have complete information concerning the problem involved I am enclosing an extract from the minutes of the Board of Curators wherein the will of Mrs. Georgia Brown Blosser was presented to the Board, and refer to you the Act of the 54th General Assembly whereby the Crippled Children's service was created, found in the Laws of Missouri 1927, pages 273 to 276, and to the Act of the 58th General Assembly, found in the Laws of Missouri 1935, page 67, whereby monies were appropriated for this service during 1935-36, and also to the Revised Statutes for 1929, Sections 9625 to 9664, governing the organization and administration of the University.

"Of course, if in your opinion, the University can expend a portion of the State appropriation for the maintenance of children sent from the University to the Blosser Home, such funds will be expended in accordance with the Act and will be reported on such forms as may be required by the State Auditor.

"We will appreciate receiving a prompt opinion from you since it is planned to expend some money at the Blosser Home during the present month, if the opinion is favorable."

Along with the same appears to be an excerpt from the records of the Board of Curators of the University of Missouri pertaining to their action with respect to the provisions of the will of the founder of the Blosser Home for Crippled Children at Marshall, Missouri, setting out Items 25, 26 and 27 of said will. These provisions of the will are quite lengthy and are not copied herein. Suffice it to say that it appears therefrom that under said will the Georgia Brown

Blosser Home for Crippled Children at Marshall, Missouri, does not belong to the University of Missouri. It is a charitable, benevolent, philanthropic and educational institution, not for pecuniary profit.

Under the terms of said will the Mercantile-Commerce Bank and Trust Company is designated as trustee, and \$500,000 is bequeathed, and likewise certain real estate located in the City of Marshall, Missouri, is devised to said trustee and its successors in trust for the Georgia Brown Blosser Home for Crippled Children. The trustee is directed to use the net income and revenue derived from said trust estate to the use of said beneficiary for the general upkeep and perpetual existence of said beneficiary.

Subdivision 2 of Item 25 of said will contains the provision that certain named parties shall constitute the first Board of Directors

"and that the faculty of the Medical School of Missouri State University shall select an additional person for each vacated membership of said association by the above-named persons caused by their death, resignation or for any other reason, and in addition thereto, the said faculty of the Medical School of the Missouri State University shall select nine other persons from time to time upon the death or resignation of any member of the association, an additional person to fill such vacated membership who with the members of the Board of Directors of said corporation shall constitute the membership of said association."

Subdivision 3 thereof, among other things, provides that if necessary steps to organize the corporation are not taken by the named Board of Directors within two years after the death of the testator,

"then the said faculty of the Medical School of Missouri State University shall designate three or more of the persons selected by said faculty of the Medical School of the Missouri State University as members of said association, who shall proceed to take all necessary steps" to organize.

Article 5 of Chapter 125, R. S. Mo. 1929, makes certain provisions with respect to the rights and duties of the University of Missouri in caring for children under fifteen years of age who are afflicted with some deformation or are suffering from some malady as a result of such deformation, said law having been originally passed in 1927.

Section 14112 thereof, among other things, provides that under certain conditions the county court, with the consent of the person having the legal custody of such child,

"shall order such child taken or sent to the hospital of the state university of Missouri for free surgical and medical treatment and hospital care."

Section 14113 thereof, among other things, provides:

"It shall be the duty of the person in charge of the hospital of the state university, or other person designated by the authorities in control of said hospital, to provide for such child, if advisable, a cot or bed, or room in the hospital, and such person shall also designate the department of the state university hospital to which the patient shall be assigned for treatment. \* \* \* \*  
In any case where, under the provision of this article, a child has been committed to the university hospital and it has been determined by the hospital staff that such child may be equally well benefited as an out-patient, at the patient's home or elsewhere, through prescribed corrective exercises and treatments, said child, by proper orders and arrangements, may be given such corrective exercises and treatments at the child's home or elsewhere under the supervision and with the advice of the hospital staff, and if the child shall be at the university hospital at the time when such method of treatment is determined upon, the return of the child to the child's home or elsewhere shall be as provided for by section 14118 of this article."



Section 14117 thereof provides that

"The curators of the university shall cause to be filed with the state auditor, a monthly report containing an itemized statement of the expenses charged against each patient received on certification of any county court",

and that the state auditor shall audit the same and, if found correct, shall issue a warrant payable to the state university, against the state treasurer for the net amount certified out of any funds appropriated for that purpose.

Section 14118 thereof, among other things, provides for the discharge of such patient by the superintendent, and

"The university hospital may, in the discretion of the superintendent or other person designated by the authorities in control thereof, pay the actual, reasonable necessary expenses of returning the said patient to his home, and pay the actual reasonable and necessary expenses incurred in accompanying such patient to his home, and such expenses shall be itemized and verified, and presented to and allowed by the auditor of the state of Missouri in connection with the bills for hospital maintenance as hereinbefore provided."

Laws of Missouri, 1935, Section 2, page 67, appropriates \$90,000 in the following words:

"There is hereby appropriated out of the State Treasury, chargeable to the State Revenue Fund, the sum of Ninety Thousand Dollars (\$90,000) for the work of the Crippled Children Service; Fifteen Thousand Dollars (\$15,000.00) of which shall be for the purchase of and repair of equipment, and other necessary expenditures for the Crippled Children Service at the University, and Seventy-Five Thousand Dollars (\$75,000.00) shall be for carrying into effect the provisions of Article 5, Chapter 125, R. S. 1929, relative to crippled children

in this State to be administered by the Missouri State University, and the University of Missouri is hereby designated as the State Agency to cooperate with, to receive and expend allotments from, the appropriate department or bureau of the Federal Government that may be authorized to allot Federal funds for the care of crippled children."

It will be seen that Article 5 of Chapter 125 nowhere contemplates that the University shall function with respect to the treatment of such unfortunate children except at the University Hospital, unless it be in Section 14113, which says that if the hospital staff of the University shall determine that the child may be equally well benefitted "as an out-patient, at the patient's home or elsewhere, through prescribed corrective exercises and treatments", and that such child "may be given such corrective exercises and treatments at the child's home or elsewhere under the supervision and with the advice of the hospital staff."

Section 14118 limits the University in discharging such patients to the actual and necessary expenses of returning them to their homes.

Section 19 of Article 10 of the Constitution of Missouri is as follows:

"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; nor unless such payment be made, or a warrant shall have issued therefor, within two years after the passage of such appropriation act; and every such law, making a new appropriation, or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such sum or object."

4 C. J., page 1460, states the following:

"An appropriation of funds is an authority from the legislature, given at the proper time and in legal form,

to the proper officers, to apply sums of money, out of that which may be in the treasury in a given year, to specified objects or demands against the state; the act of the legislature in setting apart or assigning to a particular use a certain sum of money to be used in the payment of debts or dues from the state to its creditors; a setting apart from the public revenue of a certain sum of money for a specified object, in such manner that the executive officers of the government are authorized to use that money and no more for that object, and for no other."

Said cited reference further declares as to appropriation bills, the following:

"Annual statutes by which the legislative branch of the government regulates the manner in which the public money voted at each session is to be applied to the various objects of expenditure."

In the case of *Ristine v. State*, 20 Ind. 328, 339, speaking of appropriations, is the following statement:

"An appropriation of the money to a specified object would be an authority to the proper officers to pay the money, because the auditor is authorized to draw his warrant upon an appropriation, and the Treasurer is authorized to pay such warrant if he has appropriated money in the treasury."

Section 14115, R. S. Mo. 1929, provides that the court, evidently meaning the county court, may in its discretion, appoint some person to accompany such child, etc., and

"Any person appointed by the court to accompany said child to or from the hospital, or to make an investigation and report on any of the questions involved in the information other than the physician making the examination, shall receive his actual necessary expenses incurred in making such investigation



or trip. The physician appointed by the court to make the examination and report shall receive the sum of five dollars (\$5.00) for each and every examination and report so made out of the county revenue as full compensation for such service."

This contemplates that these expenses shall be paid by the county court and not by the State University.

Section 14118 contemplates that the University shall, if it so desires, be only to the expense of sending the child to its home. Likewise, Section 14113 can contemplate no greater expense that the University may be required to incur or pay.

Section 14113, by providing that after the child has been taken into the University, the hospital staff may determine that the child may be equally well benefitted "as an out-patient, at the patient's home or elsewhere, through prescribed corrective exercises and treatments \* \* \* at the child's home or elsewhere under the supervision and with the advice of the hospital staff", leaves the child as yet under the control of the person in charge of the hospital of the State University, or other person designated by the authorities in control of said hospital, although he may, after the proper findings by the hospital staff, be sent "elsewhere".

There is no provision in Article 5 of Chapter 125, R. S. 1929, prohibiting the University of Missouri from caring for such children after being so sent "elsewhere". The \$75,000 appropriation states that it is "for carrying into effect the provisions of Article 5, Chapter 125, R. S. 1929, relative to crippled children in this State to be administered by the Missouri State University."

As long as such funds are being expended by the University for the purpose of the University carrying out the object of said Article 5, action by the University is not prohibited. It appears to us that it is not necessary that the field of activity of the University be limited to Columbia, but that such field may be enlarged to cover such other territory as the facts may reasonably justify, and in so doing the University is authorized to pay the board of such children so being cared for under the supervision and with the advice of the hospital staff.

The \$75,000 appropriation made as set forth, supra, can properly be expended only for the purposes set forth in Article 5 of Chapter 125, supra. In effect, if the University

December 10, 1935.

expends money in assisting the Georgia Brown Blosser Home for Crippled Children in taking care of such child, it is the Georgia Brown Blosser Home that is rendering the benefit to the child, it being aided therein by the University.

This narrows the inquiry as to whether the University may legally expend for another institution part of the appropriation made by the Legislature to the University.

This department has ruled in an opinion dated November 22, 1935, that the State Eleemosynary Board is not authorized to transfer funds from "D. Operation" to "C. Repairs and Replacements"; and has ruled in an opinion dated November 5, 1935, that such board has not the authority to transfer moneys from one classification of the appropriation to another classification, even with the consent of the Governor so to do; and in an opinion dated May 10, 1934, has ruled that State Hospital No. 2 has not the authority to divert its funds to State Hospital No. 1, although to assist in making a test, the result of which would be as beneficial to State Hospital No. 2 as it would be to State Hospital No. 1.

We give full faith and credit to the laudable aim prompting your inquiry and recognize the high purpose you seek to accomplish. However, our conclusion is that the law does not justify the transfer of any part of the above \$75,000 appropriation from the University to the Georgia Brown Blosser Home for Crippled Children.

Very truly yours,

DRAKE WATSON,  
Assistant Attorney General.

APPROVED:

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JOHN W. HOFFMAN, Jr.,  
(Acting) Attorney General.

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