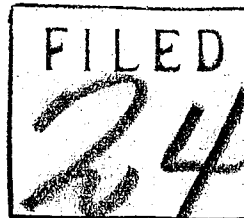


DEPARTMENT OF CORRECTIONS: (1) The Department of Corrections,
PUBLIC BUILDINGS: with the approval of the Board of
Public Buildings, has the authority
to determine that a particular building used by such department
and which is no longer useful, shall be razed. (2) Director of
Department of Corrections, with approval of the Governor, has
authority to determine type of buildings to be erected for the
use of the Department of Corrections. (3) Contracts for the
razing and construction of buildings for Department of Correc-
tions are subject to the approval of the Director of Public
Buildings.

August 30, 1954

Honorable Phil M. Donnelly
Governor of Missouri
Executive Offices
State Capitol Building
Jefferson City, Missouri



Dear Governor Donnelly:

Reference is made to your request for an official opinion
of this department reading as follows:

"The Fifty-fourth General Assembly of Mis-
souri, in 1927, enacted Senate Bill No.
138 (Laws of Missouri, 1927, page 363),
'Providing for a Separate Institution for
the Segregation, Detention and Punishment
of Incurable Offenders Within Walls of
State Penitentiary.' An appropriation of
\$250,000.00 was made for this 'Separate
Institution' and it was accordingly con-
structed in due course of time.

"It has now developed, however, that this
building is in a dilapidated and useless
condition, has long been abandoned, is of
no value to the State Penitentiary, and
should be dismantled and torn down in the
interest of safety and to improve the gen-
eral appearance of the State Penitentiary
grounds.

"Section 8.010, Revised Statutes of Mis-
souri, 1949, provides that The Board of
Public Buildings 'shall have general super-
vision and charge of the public property of
the state at the seat of government . . .'

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"Section 8.120, Revised Statutes of Missouri, 1949, provides that the Director of Public Buildings 'shall contract for and superintend the repairs and construction of any public buildings or improvements that may be required, by law, at the seat of government, when no other person or officer is directed to do the same.'

"Section 217.130, Revised Statutes of Missouri, 1949, provides that the Director of the Department of Corrections and the Governor 'shall decide what improvements (at the State Penitentiary) are necessary, not otherwise provided by law, which improvements shall be made under the direction and supervision of the division.'

"Also, would said Section 217.130 be construed as broad enough to authorize the Director and the Governor to determine the kind of buildings that should be erected on or near the premises where said present building is razed?

"There may be other sections applicable to this situation.

"In view of these somewhat conflicting sections of the statutes, I will appreciate an opinion from your office advising as to what officials have the authority to order the razing of the above described dilapidated structure and what officials shall supervise said dismantling or tearing down of this building."

We first direct your attention to a portion of Section 216.020 RSMo 1949, reading, in part, as follows:

"The department of corrections shall have the following powers:

* * * * *

"(5) To have control and jurisdiction of all real estate, buildings, equipment, machinery, facilities and products properly

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belonging to or used by or in connection with any of said institutions and branches thereof;

* * * * *

"(7) To have and exercise such further powers and duties as may be necessary to enable it to carry out its functions under the law."

We believe that this statutory authorization confers upon the Department of Corrections the power to make an original determination that a particular building used in connection with the discharge of the duties of such department is no longer suitable for the purposes of such department and should be razed.

However, as further bearing upon this question, we direct your attention to Section 8.010 RSMo 1949, which reads as follows:

"The head of the division of public buildings shall be 'The Board of Public Buildings.' The governor, attorney general, lieutenant governor and their successors in office shall constitute the board of public buildings. The governor shall be chairman and the lieutenant governor, secretary. The board shall have general supervision and charge of the public property of the state at the seat of government and such other duties as may be imposed on it by law."

These statutes relate to the same general subject matter, and therefore should be construed in such a manner as to harmonize their provisions, if possible. We believe that such a construction necessarily leads to the conclusion that a legislative intent has been expressed authorizing the Department of Corrections to make the original determination of nonusability as discussed supra. However, it further appears that such determination is thereafter subject to the approval of the Board of Public Buildings.

As bearing upon the problem arising from the need for replacement of such a facility no longer used, we direct your attention to Section 217.130 RSMo 1949, reading, in part, as follows:

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"The director and governor shall decide what improvements are necessary, not otherwise provided by law, which improvements shall be made under the direction and supervision of the division. * * *"

Here again, it seems to us, the General Assembly has granted specific authority to the Governor and the Director of the Department of Corrections to provide for the erection of any buildings which may be deemed necessary for the welfare of the prisoners committed to the state penitentiary, provided that an appropriation for the payment of the cost thereof is available. Having the authority to determine the necessity of such construction, it seems that impliedly there is also conferred upon such officials the right to determine the particular type of building which would best fulfill the purpose for which constructed.

However, what has been said heretofore with respect to the apparently unqualified rights of the Director of the Dept. of Corrections, considered in the light of certain antecedent statutory enactments, appear to be circumscribed thereby. We refer to general provisions relating to the maintenance and construction of public buildings, some of which have formed a part of our statutory law since the adoption of an act found Laws of Missouri 1835, page 115. Such acts, with subsequent amendments, now form Chapter 8, RSMo 1949. Included therein are other statutory enactments creating a Board of Public Buildings of the State of Missouri located at the seat of government. This board operates through the agency of an officer known as the Director of Public Buildings.

Several statutes bear upon the functions of the Board of Public Buildings and the Director of Public Buildings. Among them we find Section 8.070 RSMo 1949, reading as follows:

"The director shall serve as an advisor and consultant to all department heads in obtaining architectural plans, letting contracts, supervising construction, purchase of real estate, inspection and maintenance of buildings. No contracts shall be let for repair, rehabilitation, or construction of buildings, without approval of the director, and no claim for repair, construction or rehabilitation projects under contract shall be accepted for payment by the state without approval by the director; provided, that there is excepted

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herefrom the design, architectural services, construction, repair, alteration or rehabilitation of all laboratories, libraries, classrooms, technical buildings used for teaching purposes, and those buildings or utilities serving such educational units, and any building or teaching unit built wholly or in part from funds other than state appropriations."

Also Section 8.120 RSMo 1949, reading as follows:

"He shall contract for and superintend the repairs and construction of any public buildings or improvements that may be required, by law, at the seat of government, when no other person or officer is directed to do the same."

From the foregoing statutes, we reach the conclusion that the authority conferred upon the Governor and Director of the Department of Corrections with respect to the erection of buildings for the use of such department, is to be exercised pursuant to the provisions relating to the Board of Public Buildings and to the Director of Public Buildings. In other words, it is our thought that contracts to be negotiated for the carrying out of the powers of such officials are to be approved by the Director of Public Buildings.

CONCLUSION:

In the premises, we are of the opinion:

(1) That the Department of Corrections, with the approval of the Board of Public Buildings, has the authority to determine that a particular building used by such department and which is no longer useful, shall be razed.

(2) That the Governor and Director of the Department of Corrections has the authority to determine the type of building to be erected for the use of the Department of Corrections, either as a completely new structure or as a replacement for one previously used, provided that money for the payment of the cost thereof has been appropriated; and,

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(3) That all contracts for the construction of a new building or buildings by the Governor and the Director of the Department of Corrections for the use of such department are subject to the approval of the Director of Public Buildings.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Will F. Berry, Jr.

Yours very truly,

John M. Dalton
Attorney General

WFB/vtl