

Relating to additional appropriations for maintenance of Eleemosynary Institutions for salaries etc., provided the earnings are sufficient.

29
February 8, 1934.



Hon. W. Ed. Jameson, President
State Eleemosynary Board
Jefferson City, Missouri

Dear Mr. Jameson:

Acknowledgment is herewith made of your request for an opinion of this office which reads as follows:

"I would ask your special attention to the following sections of the Revised Statutes 1929, re salaries, etc., of various officers and employees of the several eleemosynary institutions under the control and management of the State Eleemosynary Board:

Section 8579: The superintendent of the State sanatorium at Mount Vernon, shall be a physician skilled in the treatment of tubercular diseases, and shall receive for his services the sum of \$3600.00 per annum, payable monthly, together with all necessary and actual traveling expenses.

Section 8580. The person appointed as superintendent of each of the several eleemosynary institutions herein named shall have complete charge, control and management of the entire institution with special attention to the health and sanitation of the respective institution over which he has been appointed as manager, and shall devote his entire time thereto, and shall receive, unless otherwise provided for, the sum of \$3,600.00 per annum, to be paid monthly, together with all necessary and actual traveling expenses. The superintendent of the Missouri state school shall receive the sum of \$3,600.00 per annum, to be paid in monthly installments, together with all necessary and actual traveling expenses.

Section 8582. The state eleemosynary board shall appoint, upon the joint recommendation of the health supervisor and superintendent of the institution concerned, not to exceed three assistant physicians for state hospital No. 1; not to exceed four assistant physicians for state hospital No. 2; not to exceed four assistant physicians for state hospital No. 3; not to exceed three assistant physicians for state hospital No. 4; not to exceed two assistant physicians for the Missouri state school; not to exceed three assistant physicians for the Missouri state sanatorium; provided that the assistant physicians shall be classified and designated as follows: First assistant physician, who shall act for the superintendent in his absence, at a salary not to exceed \$2,500.00 per annum; second, assistant physician at a salary not to exceed \$2,250.00 per annum; third assistant physician, if any, at not to exceed \$2,000.00 per annum; fourth assistant physician, if any, not to exceed \$1,800.00 per annum; and one chief clerk of the board of managers in charge of the office at Jefferson City, to be appointed by the board of managers at a salary not to exceed \$2,800.00 per annum, payable monthly.

Heretofore appropriations in sufficient amount to meet these salaries were always made and the several employees were paid in accordance therewith.

However, at the regular session of the 57th General Assembly of the State of Missouri, under the caption; H.B. 658, p.132 Session Acts 1933, was passed:

'There is hereby appropriated out of the state treasury, chargeable to the funds herein designated, the various amounts set out to pay the salaries, wages and per diem of the officers and employees and other expenses of the eleemosynary board, state hospital No. 1, state hospital No. 2, state hospital No. 3, state hospital No. 4, the Missouri state school, and the Missouri state sanatorium for the years 1933 and 1934, as follows:

* * * * *

'For Hospital No. 1--

Payable out of State revenue fund as follows:

A. Personal Service:

The salaries of the superintendent,
assistant physicians, steward and
dentist.....\$ _____'

but the usual appropriations for such eleemosynary institutions were so materially reduced, amounting in all instances to 25% or more, that it was necessary for this board, in order to keep within the amounts available to cut the salaries of officers and employees alike; and at the special or extra session of this General Assembly an effort was made to correct the seeming injustice done these employees and under the following caption:

'Section 12-7. In addition to the appropriations heretofore made by an act of the 57th General Assembly, Laws 1933, page 132, and following payable out of the earnings thereof to the support of state eleemosynary institutions, there is hereby appropriated to the following named eleemosynary institutions payable only out of their respective earnings the following sums for the years 1933, 1934, to-wit:'

the 25% reduction theretofore taken from the usual appropriations made for these institutions was restored and a sum in the aggregate equal to the original asked for by these institutions was provided for the two years 1933-1934.

This being true, I desire to ask your official opinion as to whether or not this Board can pay to these officers and employees out of the appropriations now available salaries equal to those specified in the above and foregoing sections of the statutes for the remainder of this biennium."

I

THE ELEEMOSYNARY BOARD WILL HAVE AVAILABLE FOR SALARIES, WAGES AND PER DIEM OF ALL EMPLOYEES, THE ADDITIONAL APPROPRIATIONS MENTIONED UNDER CLASS A OF THE APPROPRIATION ACT OF THE VARIOUS INSTITUTIONS THEREIN MENTIONED IN SECTION 121 THEREOF, PROVIDED THE EARNINGS OF THE INSTITUTION CREATE A SUFFICIENT FUND TO EQUAL THE APPROPRIATION, BUT NOT OUT OF ANY OTHER REVENUE.

Article IV, Section 43 of the Constitution of Missouri provides in part as follows:

"All revenue collected and moneys received by the State from any source whatsoever shall go into the treasury, and the General Assembly shall have no power to divert the same, or to permit money to be drawn from the treasury, except in pursuance of regular appropriations made by law.* * * *"

Also, Article X, Section 15 of the Constitution of Missouri provides in part as follows:

"All moneys now, or at any time hereafter, in the State Treasury, belonging to the State, shall, immediately on receipt thereof, be deposited by the Treasurer to the credit of the State for the benefit of the funds to which they respectively belong, in such bank or banks* * *"

Section 8666 R. S. Mo. 1929, provides in part as follows:

"There are hereby established and created in the treasury department of this state the following named funds: 'State Hospital No. 1,' 'State Hospital No. 2,' 'State Hospital No. 3,' 'State Hospital No. 4,' 'Missouri State School,'* * *"

Section 8667 R. S. Mo. 1929, provides as follows:

"Any moneys in the state treasury to the credit of any of the funds in this article created, paid therein under the provisions of this article, or so much thereof as may be necessary, shall be appropriated by the general assembly for the support or improvement of the institution to which the fund belongs."

Section 8659 R. S. Mo. 1929 provides as follows:

"Whenever any sum or sums of money shall be paid into the treasury of any such institution under the provisions of the preceding section, or any law of this state, and all moneys which may be received into the treasury, or by any officer or officers of any such institution, derived from the employment of the inmates thereof, or from the use or disposition of any property belonging to such institution, and all moneys coming into the treasury, or into the hands of any officer or officers of any such institution from any other source whatever for the support or improvement of such institution shall be forthwith entered on the books kept by the treasurer or other financial officer of such institution, so as to show the source from whence derived and from whom and upon what account it was received, and the same shall then be forthwith transmitted by such treasurer or other financial officer to the state treasury, and the state treasurer shall give his receipt therefor."

Section 1, page 415, Laws of Missouri 1933, provides in part as follows:

"All fees, funds and moneys from whatsoever source received by any department, board, bureau, commission, institution, official or agency of the state government by virtue of any law or rule or regulation made in accordance with any law, shall, by the official authorized to receive same, and at stated intervals, be placed in the state treasury to the credit of the particular purpose or fund for which collected, and shall be subject to appropriation by the General Assembly for the particular purpose or fund for which collected during the biennium in which collected and appropriated. The unexpended balance remaining in all such funds (except such unexpended balance as may remain in any fund authorized, collected and expended by virtue of the provisions of the Constitution of this State), shall at the end

of the biennium and after all warrants on same have been discharged and the appropriation thereof has lapsed, be transferred and placed to the credit of the ordinary revenue fund of the state by the state treasurer.* * * * *

It will be observed that House Bill No. 127, extra session of the 57th General Assembly, provides under Section 12T additional appropriations for the following named eleemosynary institutions for salaries, wages and per diem of all employees to-wit:

Hospital No. 1.	\$35,309.00
Hospital No. 2.	52,500.00
Hospital No. 3.	16,580.00
Hospital No. 4.	29,000.00
Missouri State School at Marshall.	320.00
Missouri State Sanatorium at Mt. Vernon	55,279.00

These appropriations however are payable only out of their respective earnings. The income or earnings of these various institutions is derived from the various sources attested by the statutes, but no matter from what source derived it is required to be paid into the State Treasury under the provisions of Section 8669 supra, and it becomes State money,--that is money the State in its sovereign capacity is authorized to receive, the source of its authority being the Legislature.

Section 8666 supra, provides for the establishment and creation in the treasury department of special funds, and whenever any moneys are paid into the State Treasury by the various institutions as provided by law, they shall be placed to the credit of the fund to which they respectively belong. In the case of State ex rel. v. Gmelich, 208 Mo. 152 l. c. 162, the Court in part says:

* * * * *In our judgment, the State Treasurer has thus been made a financial officer of this institution for the purpose of collecting these moneys,* * * * *

Section 8667 supra, provides that all moneys in the State treasury to the credit of the various funds created under Section 8666 supra, and so much thereof as may be necessary, shall be appropriated by the General Assembly for the support or improvement of the Institution to which the fund belongs.

February 8, 1934.

CONCLUSION.

In view of the constitutional provisions, statutes and constructions of the Supreme Court thereon, this department rules that the eleemosynary board, will have available for salaries, wages and per diem of all employees, the additional appropriations mentioned in Section 127 under Class A of House Bill No. 127 of the various institutions therein mentioned, provided the earnings of the respective institutions equal the appropriations, but the appropriations therein mentioned are not payable out of the general revenue.

Our construction is made in pursuance of the purpose of the Bill itself and 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, 8 Mo. 122.
Darling Lumber Company vs. Missouri Pacific Railroad Company, 216 Mo. 658.
Rutter vs. Carothers, 223 Mo. 631.
State vs. General Baking Company, 283 Mo. 396.

Yours very truly,

W. W. BARNES,
Assistant Attorney General,

APPROVED:

ROY McKITTRICK,
Attorney General.

WB:MMZ