

ELEEMOSYNARY INSTITUTIONS: Boiler inspection insurance may  
STATE PURCHASING AGENT: be purchased by the State Purchasing  
Agent for Eleemosynary Institutions.

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April 17, 1943

Mr. Ira A. Jones, President  
Board of Managers  
State Eleemosynary Institutions  
Jefferson City, Missouri



Dear Sir:

This is to acknowledge your letter of recent date in which you request an opinion on the questions propounded therein. Your letter is as follows:

"For the past several years the Eleemosynary Institutions have carried what is called boiler inspection service. With this boiler inspection service there has been an insurance feature. There is no wording in the appropriation bill that allows us to buy insurance. However, we cannot purchase boiler inspection service without the insurance feature. This policy expires April 15, 1943.

"We have asked the Purchasing Agent to purchase boiler inspection service for us, and he informs us that it cannot be purchased without the insurance feature; he also advises us that he has an opinion from you that he cannot purchase insurance, unless it is specifically set out in the appropriation. The Purchasing Agent advises that we buy this insurance without consulting his office. In view of Section 14598 R. S. Mo. 1939, we doubt if this is possible, as it seems to us that this is a contractual service. We would like an opinion from your office on three things:

"1. Can we purchase this boiler inspection service, taking the insurance feature because it cannot be purchased without?

"2. If the word 'insurance' appears in the new appropriation bill will it be possible for us to purchase it?

"3. In either event, is it to be purchased by the Purchasing Agent or by the Board of Managers?"

I

Referring to the first question as set forth in your letter above, this department has heretofore rendered an opinion to Hon. W. Ed Jameson, President, Board of Managers, State Eleemosynary Institutions, under date of July 31, 1936, in which we informed him that it was the opinion of this department that the inspection of the boilers of the Eleemosynary Institutions of this State is a reasonable and necessary expense to the proper care and upkeep of said institutions, and that said expenses may be paid from the Operation fund of the several institutions. However, you state that it is necessary for you to buy insurance in order to obtain boiler inspection service. We do not think you would be authorized to purchase insurance of that character for the purpose of obtaining boiler inspection service, for the reason that the boiler inspection service is incidental to the insurance feature. If you can purchase the boiler inspection service without being compelled to buy insurance we are of the opinion that you may do so, otherwise our answer would be in the negative to this question.

II

Referring to your second question, as set forth in your letter above, it is not clear to us whether the word "it" in this question refers to insurance, or whether it refers to boiler inspection service. It is our opinion that if the appropriation act authorizes you to purchase insurance, and a boiler inspection service is incidental to the insurance contract, that you would be authorized to obtain boiler inspection service in such manner. Insurance companies which sell

this class of insurance are directly interested in the safety of the boilers so insured and necessarily inspect them at stated periods to lessen the risk. And, if the appropriation act reads "insurance and boiler inspection service" this would clarify the situation.

It is our opinion, however, that if money is appropriated by the Legislature to the Eleemosynary Institutions for the purpose of purchasing insurance, and boiler inspection service is incidental to the insurance contract, such insurance may be purchased for the institutions by the State Purchasing Agent.

### III

To your third question, as set forth in your letter above, we refer you for an answer to Section 14598 R. S. Mo. 1939, which provides as follows:

"Whenever any department or agency of the state government shall purchase or contract for any supplies, materials, equipment or contractual services contrary to the provisions of this chapter or the rules and regulations made thereunder, such order or contract shall be void and of no effect. The head of such department or agency shall be personally liable for the costs of such order or contract, and, if already paid for out of state funds, the amount thereof may be recovered in the name of the state in an appropriate action instituted therefor."

It is our opinion that the purchase of insurance by the various Eleemosynary Institutions of this State comes within the terms in this statute of "contractual services" and, therefore, it is necessary that if and when it is required that insurance be purchased, and money is appropriated for that purpose, that same be done by the State Purchasing Agent.

Respectfully submitted,

APPROVED:

ROY MCKITTRICK  
Attorney-General

COVELL R. HEWITT  
Assistant Attorney-General

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