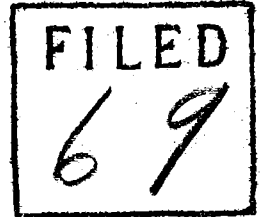


DIVISION OF WELFARE: The Division of Welfare, being successor to  
: Board of Managers of the State Eleemosynary In-  
CONFEDERATE HOME : stitutions, shall have custody of endowment funds  
: for Confederate Home.

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September 6, 1946.



*2/1  
J... + B...  
Painter*

Honorable W. R. Painter,  
c/o Democrat Printing Company,  
Carrollton, Missouri.

Dear Governor Painter:

We are in receipt of your request for an opinion under date of August 10, 1946, addressed to Honorable Phil M. Donnelly, Governor, State of Missouri, which reads:

"I have a fund of some \$24,000 in Bonds and money, gifts for the Memorial Park at the Confederate Home. This land as I see it is no longer a part of the Confederate Home, having been set aside by the Legislature as a Memorial. For the past four or five years, the state employees of the home have taken care of the Park, cut the grass and other little things that needed work. Outside of that the Park has not been a charge to the State, except the Bond I give was paid out of funds of the Home.

"It seems to me that the Park Board is really the right department to look after the Park and have charge of the fund that has been raised under direction of a state law.

"I called Mr. Proctor Carters attention to this and informed him that I was ready to turn over the Bonds and money at any time. He informed me that he is ready to take up the matter.

"The only point I make is for the State to decide finally what department this fund should go to that the interest may be used to keep the Park in order. The interest will not be sufficient to keep it in first class condition, therefore it seems to me that it should go to the Park fund so it can be well kept.

"Will be glad to hear from you as I want to give those funds to some one this week."

We are assuming the fund referred to in your letter is the money received under the will and in the estate of C. T. Jaquith; the relevant parts of said will read:

"Fourth: I direct and instruct my executors, to be hereinafter named to pay to the Managing Officers of the Masonic Home of St. Louis, Missouri and their successors in said office of the Masonic Home for the use and benefit of said Masonic Home; and the Board of Managers of the Confederate Home at Higginsville, Missouri, and their successors in office of said Board of Managers, for the use and benefit of said Confederate Home, all the remainder and residue of my estate, both real and personal, in equal parts, share and share alike.

"Fifth: After the death of my beloved wife, Florence Jaquith, I give, devise and bequeath all the real estate and personal property which I have bequeathed to her in the second clause, of this my last will and testament, during her natural life; to the Managing officers of the Masonic Home at St. Louis, Missouri, and their successors in said office of said Masonic Home, for the use and benefit of said Masonic Home; and the Board of Managers of the Confederate Home at Higginsville, Missouri; and their successors in office of said Board of Managers, for the use and benefits of said Confederate Home at Higginsville, Missouri; to each one half ( $\frac{1}{2}$ ), that is to be divided in two equal parts, share and share alike.

"The bequests, both real and personal, made and devised to the Masonic Home at St. Louis, Missouri, and to the Confederate Home at Higginsville, Missouri, I direct and instruct shall go to the Endowment Funds of said Masonic Home and said Confederate Home; and the income and interest thereon to be used for the benefit of said Masonic Home and said Confederate Home."

The foregoing clauses of said will clearly indicate that the income only from the money received under said will shall be used for the benefit of the Confederate Home, and that said fund shall vest in the Board of Managers of the Confederate Home, at Higginsville, and their successors in office.

Under Senate Bill 349, p. 14, as passed by the 63rd General Assembly, the Division of Welfare is made the successor in office to the Board of Managers of the State Eleemosynary institutions,

and said bill further provides that said Division of Welfare shall have control and administration of the Confederate Home, as heretofore lawfully exercised by the Board of Managers of the State Eleemosynary Institutions. Section 31 reads, in part:

"\* \* \* The division of welfare shall also have control and administration over the confederate home near Higginville, and the inmates thereof, in the same manner and to the same extent as has heretofore been lawfully exercised by the board of managers of the state eleemosynary institutions.\* \* \*"

Section 15132 of Senate Bill 178, passed by the 62nd General Assembly, p. 955, Laws, 1943, designates the Board of Managers of the State Eleemosynary Institutions as custodian of any endowment or other funds pertaining to the Confederate Home, and said board shall have authority to accept gifts, donations or bequests for the use of the Home, and said board is further authorized to set aside from gifts, donations or bequests, a sum amounting to Seventy-five Thousand Dollars (\$75,000.00) to be maintained as a permanent endowment for the maintenance of the grounds at the Confederate Home. Said provision further authorizes said board to invest money so derived, and to use only the income therefrom.

In view of the foregoing statutes, designating the Board of Managers of the State Eleemosynary Institutions as custodian of any gifts, donations or bequests for use of the Confederate Home, and Senate Bill 349, supra, transferring the control and administration of said Confederate Home to the Division of Welfare, and said will naming the Board of Managers of the State Eleemosynary Institutions and its successors in office as custodian of said fund for the Confederate Home, it is the opinion of this department that the Division of Welfare is now entitled to custody of said fund.

Respectfully submitted,

AUBREY R. HAMMETT, Jr.,  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR,  
Attorney-General

ARR/LD