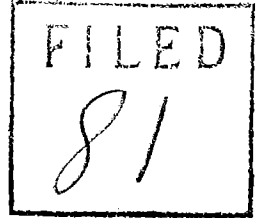


EDUCATION: IN RE: The State Board of Training Schools has, with the  
SCHOOLS: approval of the Director of Public Buildings, the  
authority to raze an unsafe building on the grounds  
of one of the State Training Schools.

October 7, 1946



Mr. Louis J. Sharp  
Director, Board of Training Schools  
Capitol Building  
Jefferson City, Missouri

Dear Mr. Sharp:

This will acknowledge receipt of your letter of recent date requesting an opinion of this department as follows:

"We are again requesting the assistance of your office in interpreting the powers and duties of the State Board of Training Schools.

"Does the Board have the power to order the razing of an unsafe building on the grounds of any one of the three training schools? If the Board does not have this power, we should like to know which agency has this power.

"We ask this question because Mr. John F. Powell, State Building Director, at the request of the Board, has made an inspection of Marmaduke Cottage at Chillicothe, reports it in an unsafe condition, and recommends to the Board that it be razed. The building has not been used for some time except for storage purposes.

"We shall greatly appreciate your ruling in this matter.

"By order of the State Board of Training Schools."

At the outset and before a discussion of the authority of the State Board of Training Schools with regard to the question raised in your letter, we call your attention to the following provisions of Senate Bill No. 297, passed by the 63rd General Assembly and approved by the Governor. This bill sets up a division of public buildings, the head of which is the Board of Public Buildings,

consisting of the Governor, Attorney General and Lieutenant Governor of the State of Missouri. The Board appoints a Director of Public Buildings whose duties and authority, in those respects which are pertinent to the question before us, are set out below:

"(c) The Director shall inspect all buildings and report to the General Assembly at the commencement of each regular session upon their condition, maintenance, repair and utilization,

"(d) 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.

"(e) The Director shall set forth reasonable conditions to be met and procedures to be followed in the repair, maintenance, operation, construction and administration of state buildings. The conditions and procedures shall be codified and filed with the Secretary of State in accordance with the provisions of the constitution. No payment shall be made on claims resulting from work performed in violation of these conditions and procedures, as certified by the Director."

The above provisions of Senate Bill No. 297, we think, require that the approval of the Director of Public Buildings be obtained by the heads of all departments before undertaking the work of constructing, maintaining, or rehabilitating buildings. Therefore, since the razing of Marmaduke Cottage at Chillicothe would, we think, be in the nature of a rehabilitation, it would be necessary to have the approval of the Director of Public Buildings before a contract could be let for this purpose.

We proceed now to the primary question of the authority of the State Board of Training Schools to initiate work on buildings under its jurisdiction and to carry such work forward with the approval of the Director of Public Buildings.

Senate Bill No. 347, passed by the 63rd General Assembly and approved by the Governor, created a State Board of Training Schools having charge and control of training schools and industrial homes in this state. The Industrial Home for Girls at Chillicothe is one of such schools and is so mentioned in the Act. Section 20, page 9 of Senate Bill No. 347 transfers the duties, regarding the training schools, which were exercised by the former commission of Penal Institutions, to the Board of Training Schools, in the following language:

"\* \* \*In relation to any of the above named juvenile training schools, whenever the term commission of penal institutions is used in any act, it shall hereafter be understood to mean the state board of training schools."

Section 9009, R. S. Mo. 1939, reads as follows:

"There shall continue to be maintained at Chillicothe in the county of Livingston in this state an institution under the name and style of the 'State industrial home for girls.'"

Section 8972, R. S. Mo. 1939, reads, in part, as follows:

"The Department of Penal Institutions shall be under the control and management of a commission composed of three members, not more than two of whom shall belong to the same political party, who shall be known as Commissioners of the Department of Penal Institutions, and who shall have and exercise the powers, and perform the duties and functions in this article provided, and as otherwise authorized by law. The commissioners of the department of penal institutions shall reside in Jefferson City and devote their entire time to the duties of their respective offices. Said department of penal institutions shall have and exercise control and jurisdiction over all penal institutions in this state supported in whole or in part by the direct appropriation of money out of the state treasury, and more particularly over the Missouri training school for boys at Boonville, the state industrial home for girls at Chillicothe, the state industrial home for negro girls at Tipton, the intermediate

reformatory at Jefferson City and the state penitentiary and prison at Jefferson City, together with all real estate, buildings, machinery and personal property belonging to or used by, or in connection with, said penal institutions, or any thereof."

Section 8985, R. S. Mo. 1939, reads, in part, as follows:

"The commission of the department of penal institutions shall, subject to law, have the exclusive government, regulation and control of the Missouri state penitentiary, the intermediate reformatory for young men, the Missouri training school for boys, the industrial home for girls, the industrial home for negro girls and of all other penal or reformatory institutions hereafter created and of all persons who now are or who hereafter shall be legally sentenced to either of the institutions hereinabove mentioned or referred to and who shall be committed to the custody of said commission and said commission shall make and enforce such by-laws, rules and regulations as they from time to time deem necessary and proper in the management of all institutions or persons now or hereafter legally committed to said commission, and shall be vested with and possessed of all other powers and duties necessary and proper to enable it to carry out fully and effectually all the purposes of this article.\* \* \*"

The above sections, we think, give the Commission of Penal Institutions adequate power to raze a building located on the property of the Chillicothe School. Since, by the terms of Senate Bill No. 347, the Board of Training Schools possesses the same power as the Commission of Penal Institutions, we think the Board has the power to raze a building at said Institution.

The right of a Board, having control and management of educational institutions, to determine whether money should be spent in necessary repairs on buildings of such institution, was upheld in State ex rel. Thompson v. Board of Regents of the Kirksville State Teachers College, 305 Mo. 57, 264 S. W. 698. The court in the case, in sanctioning the action of the Board of Regents of the State Teachers College in applying certain insurance money to repairs on buildings at the school, used the following language at l. c. 66:

"\* \* \*In furtherance of its discretion it proceeded at once to expend a portion of the money thus received in repairs necessary for the protection of certain damaged buildings and to partially replace the library. When this writ was served the board was taking steps to replace the destroyed buildings. It is charged with no wrong doing or the usurpation of any power which has not at least received tacit legislative and public approval for a half century. These facts are entitled to more than persuasive consideration in determining the question here seeking solution. Absent qualifying incidents they may arise to the dignity of ruling decisions. (State ex rel. v. Gordon, 266 Mo. 412; Folk v. St. Louis, 250 Mo. 141.)\* \* \*"

Decisions from other jurisdictions have authorized similar boards to take actions with regard to construction and maintenance of the buildings which form the plant of an education institution under no greater authority than is granted to the Board of Training Schools under our present law.

Brooks v. Shannon (1939) 86 Pac(2d) 792;  
Woodson v. Kingman Co. (1939) 274 Pac. 728;  
Hailey v. City (1928) 144 S. W. 377;  
Ross v. City (1940) 290 N. W. 587.

The Ross case authorized the razing of a school building by a city under authority of a statute which granted to the city the control and management of the school.

#### CONCLUSION

It is, therefore, the opinion of this department that the state Board of Training Schools has the authority, subject to the approval of the Director of Public Buildings of the State of Missouri, to raze an unsafe building on the grounds of one of the training schools under its jurisdiction.

Respectfully submitted,

APPROVED:

J. E. TAYLOR  
Attorney General

SMITH N. CROWE, JR.  
Assistant Attorney General

SNC:mw