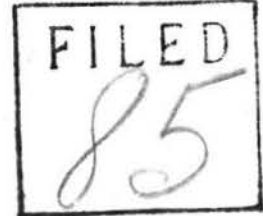


Insurance may be carried on properties of state institutions if authorized by statute and if legislature makes appropriations for payment of premiums.

December 29, 1937



Honorable Lloyd C. Stark,  
The Governor,  
Jefferson City, Mo.

My dear Governor:

This will acknowledge receipt of your letter dated December 8, 1937, requesting an opinion from this office which reads as follows:

"Is the State of Missouri supposed to carry insurance on the steam boilers in the various State Institutions?"

I would also like to have your opinion on fire insurance on the various Institutions."

As the authority and duties of the state and its agencies to carry boiler insurance are the same as those which apply to fire insurance, we will include the answer to both of these classes of insurance in one opinion.

We are assuming that your request applies to the insurance on the properties of eleemosynary, penal and educational institutions of the state.

Article IV, Section 48 of the Constitution of Missouri provides as follows:

"The General Assembly shall have no power to grant, or to authorize any county or municipal authority to grant any extra compensation, fee or allowance to a public officer, agent, servant or contractor, after service has been rendered or a contract has been entered into and performed in whole or in part, nor pay nor authorize the payment of any claim hereafter created against the State, or any county or municipality of the State, under any agreement or contract made without express authority of law; and all such unauthorized agreements or

contracts shall be null and void."

Article X, Section 19 of the Constitution of Missouri provides as follows:

"No moneys shall ever be paid out of the treasury of this State, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made, or a warrant shall have issued therefor, within two years after the passage of such appropriation act; and every such law, making a new appropriation, or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such sum or object. A regular statement and account of the receipts and expenditures of all public money shall be published from time to time."

In order to carry insurance on the properties of the above named institutions, the officials managing such institutions must have authority by statute to make contracts for insurance and the legislature must have made an appropriation for the payment of the premiums for such insurance. Section 11421 R.S. Mo. 1929 provides as follows:

"No warrant shall be drawn by the auditor or paid by the treasurer, unless the money has been previously appropriated by law; nor shall the whole amount drawn for or paid, under any one head, ever exceed the amount appropriated by law for that purpose."

We will, therefore, have to look to the statute creating the boards which manage, control and operate these institutions to ascertain by what authority that they may make such contracts, and look to the appropriation acts for these institutions to determine whether or not the appropriation has included the item of insurance.

In the case of State ex rel. v. Hackman, 282 S.W. 1007, 1.c. 1013, the court in discussing an appropriation which was made in payment of a claim which was not authorized by law, said:

"And it might be said in passing that the Legislature could not now pass a valid act appropriating money out of which relator's claim could be paid, because his claim is based upon a contract entered into without authority of law, and section 48 of article 4 of the Constitution expressly prohibits the General Assembly from authorizing the payment of any claim hereafter created against the state under any agreement or contract made without express authority of law, and that all such authorized contracts shall be null and void."

In 59 Corpus Juris, Section 390, pages 250, 251, it is said:

"In some states, there are constitutional provisions requiring a distinct statement of the purpose of an appropriation in the bill making such appropriation; and, according to some authorities, a requirement of specific appropriation has been held to be of equivalent force in requiring a definite statement of the purpose of appropriation \*\*\*\*\*."

In construing appropriation measures, the courts have held that such appropriation must be strictly construed. Meyer v. Kansas City et al. 18 S.W. (2d) 900.

In regard to the authority of the board of managers of the eleemosynary institutions to make contracts for insurance, we look to the statutes creating this board and setting out its duties.

Section 8565 R.S. Mo. 1929, reads as follows:

"The board of each institution shall have authority to make all necessary

rules, regulations and bylaws for the government, discipline and management of such institution not inconsistent with the laws of this state, and such rules, regulations and by-laws, when so made and adopted by the board, shall be binding upon all officers and employes of the institution, and shall remain in force and effect until changed or annulled by the board by an order entered upon the records of such institution."

And Section 8566 R.S. Mo. 1929, reads as follows:

"The board of managers herein provided for shall make, through their proper officers, to the general assembly, on or before the second Monday of each session thereof, biennial reports, under oath, containing a classified statement of all the actual expenditures of their respective institutions, showing the disbursements of all funds appropriated by the general assembly, or received from other sources, for the maintenance of the same, together with a statement of all money used for repairs and buildings and other improvements, together with a list of all officers and employes, the nature of their employment and the compensation allowed to each, before there shall be any money appropriated out of the state treasury for their support and maintenance; said reports shall be printed in sufficient numbers for the information of the general assembly and for their respective institutions. The cost of such printing shall not be greater than the rate agreed upon with the state printer, and shall be paid out of the appropriations made for the support of said institutions."

While Section 8565 supra does not specifically state that the board of managers shall have authority to maintain the buildings of the eleemosynary institutions, yet the legislature, in Section 8566 supra, directed the board to report any disbursements they may have made for maintenance of these buildings. Having requir-

ed such a report, we may assume that the law makers intended that the board of managers were authorized to maintain the buildings.

On the question of the powers and duties which are incidental to maintenance, we find the rule to be stated in the following authorities and cases.

In Encyclopedia of Insurance Law, Couch, Volume I, Section 226, it is said:

"And if a city charter empower it to maintain public buildings, the city acquires, as incidental to the power thus granted the right to contract for insurance against their loss or destruction."

In the case of Clark School Township v. Home and Insurance Trust Company, 51 N.E. 107, 109, the court said:

"We are of the opinion that, under the statutory provision placed upon the trustee the duty of caring for and managing the school property, he has such implied authorities that, in the exercise of his discretion, he may make reasonable expenditures from the special school revenue, by way of procuring insurance on such property against fire."

In the case of Walker v. Linn County, 72 Mo. 650, the court held that county courts have power to enter into contracts for insurance of county buildings against fire or lightning.

And in 59 Federal, page 741, the rule is stated that:

"Where a power is given by a statute, the courts should as a rule hold that anything necessary to make it effectual is given by implication."

Following the foregoing authorities and cases, it would seem that the board of managers of the eleemosynary institutions have the authority to enter into contracts of insurance on the properties belonging to the state at such institutions provided the legislature makes an appropriation for the payment of the premiums for such insurance.

Looking to the appropriation acts of 1937, 1937 Session Acts beginning at page 50, we find that the appropriations were made for the eleemosynary institutions under sub-division D of the appropriations for each one of these institutions, under the item "operation" are listed:

"Hospital No. 1--	
State Revenue fund	
Sub-division D. Operation:	
General expense, materials and supplies	
.....	51,200.00
State Hospital No. 1--	
Fund	
Sub-division D. Operation:	
General expense, and material and supplies	
.....	544,000.00
Hospital No. 2--	
State Revenue fund	
Sub-division D. Operation:	
General expense, materials and supplies	
.....	50,800.00
Hospital No. 2--	
Fund	
Sub-division D. Operation:	
General expense, material and supplies	
.....	743,051.00
Hospital No. 3--	
State Revenue fund	
Sub-division D. Operation:	
General expense, materials and supplies	
.....	17,200.00
Hospital No. 3--	
Fund	
Sub-division D. Operation:	
General expense, material and supplies	
.....	453,390.00
Hospital No. 4--	
State Revenue fund	
Sub-division D. Operation:	
General expense, materials and supplies	
.....	25,600.00
Hospital No. 4--	
Fund	
Sub-division D. Operation:	
General expense, and material and supplies	
.....	326,608.00

Missouri State School at Marshall--  
Fund

Sub-division D. Operation:  
General expense: material and supplies  
..... 230,000.00

Missouri State School at Marshall--  
Fund

Sub-division D. Operation:  
General expense, material and supplies  
..... 245,000.00

Missouri State Sanatorium at Mt. Vernon--  
State Revenue fund

Sub-division D. Operation:  
General expense: Material and supplies  
..... 255,000.00

Missouri State Sanatorium--  
Fund

Sub-division D. Operation:  
General expense: Material and supplies  
..... 115,580.00

The foregoing is the way in which the appropriations were made under the item for "operation" for the various institutions of the eleemosynary institutions.

The only sub-division out of which the premiums for the insurance on these institutions could be paid is listed as "operations." We are of the opinion, however, that the foregoing clauses of the appropriation act are not broad enough and specific enough to permit the board of managers of the eleemosynary institutions to take out of the fund appropriated for operations the money in payment of the premiums for the insurance.

The general rule is that where general words are followed by particular words, the general words would be restricted and confined to the particular words used. This rule has been applied in the construction of appropriation acts. In case of State ex rel. Dierks, 214 Mo. 278, the court had for consideration an appropriation under the St. Louis Charter. The words in that appropriation in which the relator relied upon were:

"Other expenses of the house of delegates."

The court in discussing this question at l.c. 591, said:

"Relator contends that the words 'other expenses of the house of delegates,' are sufficient to authorize the payment of this money out of the unexpended balance

in that fund. The whole clause of the ordinance reads:

'Publishing proceedings, printing, stationery, office supplies, furniture, rent of telephone and other expenses of the house of delegates,'

To our mind the rule of ejusdem generis fully applies here. The term 'other expenses' means expenses of the character theretofore mentioned in that clause of the appropriation act and does not include an appropriation for work of the character performed by the relator."

Following the above rulings, we are of the opinion that the moneys appropriated by the legislature under the foregoing clauses for the eleemosynary institutions can only be used for the purposes enumerated such as materials and supplies. We do not believe that the insurance premiums are similar enough to materials and supplies to bring them within the provisions of the aforesaid clause of the appropriation acts for these institutions.

The failure of the legislature to appropriate money for the payment of insurance premiums evidences an intention on the part of the law makers that they desire that the state carry its own insurance on these buildings. We are, therefore, of the opinion that the legislature having failed to make appropriations for the payment of the premiums for the insurance on the buildings of the eleemosynary institutions intended that the state carry its own insurance on such buildings.

In determining whether the commissioner of the department of penal institutions have authority to contract for insurance, we refer to Section 8316, page 327, Session Acts of Missouri, 1933, which is as follows:

"There is hereby created and established a department to be known as the Department of Penal Institutions, by which name it shall have perpetual succession, with the right to complain and defend in all courts; and to adopt and use a common seal and alter the same at pleasure. 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 reformatory at Booneville, 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 8329 R.S. Mo. 1929, provides that the penitentiary shall be maintained at Jefferson City, Missouri.

Section 8345 R.S. Mo. 1929, provides that the training school for boys shall be located and maintained at Booneville.

Section 8362 R.S. Mo. 1929, provides that the State Industrial Home for Girls be maintained at Chillicothe, Missouri.

Section 8375 R.S. Mo. 1929, provides that the State Industrial Home for negro girls shall be maintained at Tipton, Missouri.

Following the authorities and cases cited in this opinion relating to the powers and duties which are incidental to maintaining the properties of the eleemosynary institutions, this department is of the opinion that the commissioners of the department of penal institutions being authorized by statute to maintain the properties of the penal institutions above named, as incidental to the maintenance of such institutions

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are authorized to enter into insurance contracts for the protection of the properties. Upon an examination of the appropriation acts of 1937, we find that the legislature included in the appropriation for the penal institutions an item for the payment of insurance premiums.

CONCLUSION

This office is, therefore, of the opinion that the commissioner of the department of penal institutions may enter into contracts for insurance and pay out of the respective appropriations the premiums for insurance on the properties of the penal institutions herein above named.

As to the educational institutions we find that this office on January 26, 1937, rendered an opinion covering the question of insurance on buildings of the educational institutions. This opinion seems to cover the subject of your inquiry as to such institutions and we are enclosing a copy of it for your use.

Respectfully submitted,

TYRE W. BURTON  
Assistant Attorney General

APPROVED:

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ROY McKITTRICK  
Attorney General

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