

PENITENTIARY: (1) Use of convicts as servants by officers of Penitentiary; (2) Paying of subsistence to officers for convicts used as servants.

4-5
March 31, 1934.



Hon. Forrest Smith
State Auditor
Jefferson City, Missouri

Dear Mr. Smith:

This is to acknowledge your letter, dated March 19, 1934, as follows:

"I am enclosing a letter from Hon. S. B. Hunter, Director of the Penal institutions of this state, with a request for information relative to allowing subsistence to the officers of the penal institutions of this state."

The letter from Hon. S. B. Hunter, referred to by you, discusses two questions: (1) Use of convicts as servants in the families of officers (Director, Warden and Deputy Warden) of the Missouri State Penitentiary, and (2) allowing of subsistence per month per convict servant.

I.

USE OF CONVICTS AS SERVANTS.

Laws of Missouri, 1933, page 327, Section 8316, provides in part as follows:

"There is hereby created and established a department to be known as 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, * * * *, 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."

Section 8317 provides in part the following:

"The governor shall designate one of said commissioners as director of penal institutions, and the commissioner so designated shall by virtue thereof be chairman of said commission and reside and have his official residence in the house near the Missouri state penitentiary."

Section 8317, supra, is the only provision of the law that we find that concerns or refers to the official residence owned by the State of Missouri. The history of the building of this residence is a little obscure. In 1885 when the big heavy stone wall (that surrounds the Penitentiary) was remodelled and enlarged it was recommended in the biennial report of the board of inspectors of the Missouri State Penitentiary (1885-1886) that purchase of ground convenient to the prison be made for the purpose of building a warden's residence. In 1887, Section 22, of the Session Laws, this item is found, "for warden's house, seven thousand, five hundred dollars (\$7,500)." The warden's house was built in 1887-1889 (Report of Board of Inspectors, 1887-1888) which contains this:

"The new warden's residence is nearing completion. It is built of stone and brick, the product of convict labor, and all the work done upon it has been done by convicts, with the exception of some few instances, where we have found

it necessary to employ skilled labor. There has been no money drawn from the treasury for this building, it having been paid for out of the earnings of the penitentiary."

In 1879 (Session Laws, 1879, page 118) the Legislature provided that the warden should "reside within the precincts of the penitentiary in a house provided for that purpose." This was Section 12467, R. S. 1919, which was repealed in 1921 (Laws of Missouri, 1921, p. 554).

Thus, so much for the history of the mansion. Now the director of penal institutions, by virtue of Section 8317, has the right to live therein.

Laws of Missouri, 1933, page 101 et seq., is the appropriation for the state penal board and penitentiary. Page 103 provides this:

"D. Operation:

General expense; including communication, printing and binding, regulative, transportation of things, travel, and other general expense; material and supplies, consisting of household supplies 425,000",

which is payable out of the state revenue. The above provision is the only one that makes any reference to the mansion, to-wit, "household supplies." However, the Legislature evidently had in mind the mansion owned by the State of Missouri, and connected with the Penitentiary. However, herein we do not express an opinion as to the meaning of these words, and only call attention to same in order to support our conclusion on the questions which you request our opinion.

Section 8406, R. S. Mo. 1929, provides in part as follows:

"The board is hereby authorized to use the labor of convicts, not otherwise employed, at any of the * * * * *

on improving any of the public grounds belonging to the state, * * * * * ; or otherwise, as the board deems advisable;"

Section 8397, R. S. Mo. 1929, provides in part as follows:

"Said board shall classify the convicts in their labor * * * * *, into as many classes as they deem advisable. And the board shall use its best endeavors to the end that the expenses of the penitentiary may be paid out of the proceeds of the labor of the convicts * * * * *; but nothing in this article shall be construed as forbidding the warden and deputy warden from using convicts as servants in their own families, subject to such rules as may be prescribed by the board."

Thus, the Legislature has given to the warden and deputy warden, under such rules as may be prescribed by the board, the right to the use of convicts as servants. The regulation of the number of the servants is left to the board. The director, due to changes in the law, now occupies the position formerly occupied by the warden, that is, before the enactment of the 1933 Law, the warden occupied the residence now occupied by the director; so that we believe, and it is our opinion, that the director would be entitled to convicts as servants in the mansion, and it is our further opinion that the warden and deputy warden would likewise be entitled to convicts as servants in their home.

II.

SUBSISTENCE ^{not} ALLOWED FOR CONVICT SERVANTS.

Constitution of Missouri, Section 19, Article X, provides in part the following:

"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;"

Appropriation laws for the Missouri State Penitentiary, as well as the statutory law, make no provision for the payment of upkeep or subsistence for the convicts used as servants in the director's mansion or the deputy warden's or warden's home. The words, "household supplies", as used in the appropriation act of 1933, in our opinion, do not include paying of subsistence for upkeep of convicts used as servants. And, if the Legislature intended reimbursement to, or paying subsistence to, officers who use convicts as servants, it would have made provision for such. The Legislature intimates the contrary--and, in fact, guards against a diversion of not only the moneys of this State, but also the supplies, fuel, provisions or manufactured articles of the Penitentiary.

Section 8419, R. S. No. 1929, provides:

"Neither the warden nor the superintendent of industries shall sell or give to any of the officers or employes of the prison any fuel, forage, provisions or manufactured articles under his charge, nor permit such things to be taken or used except for the use and benefit of the state. Any alleged violation of this provision may be examined into by said board, and if found to be true, shall be held to be just cause for the removal of the warden or superintendent of industries, or both, as the case may be."

Therefore, in view of the above constitutional provision and statutes, it is our opinion that the board has no right, grant or authority, by statute or otherwise, to allow any sum per month for subsistence of convict servants.

Yours very truly,

APPROVED:

JLH:EG

ROY MCKITTRICK
Attorney-General

James L. HornBostel
Assistant Attorney-General