CLAIMS AGAINST THE STATE: The State is not liable in damages for the wrongful acts of inmates of a State maintained training school for the care and treatment of feeble-minded and epileptic patients.

June 18, 1951

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FILED
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Honorable Charles A. Witte
Missouri State Senate
Jefferson City, Missouri

Dear Senator Witte:

This will be in reply to your request for an opinion from this department whether the Legislature is authorized to include in an appropriation bill the reimbursement out of public funds of a person whose property is said to have been destroyed by a fire occasioned by inmates of Bellefontaine Farms, premises used by the St. Louis Training School, a public institution, maintained by the State for feeble-minded and epileptic persons. Your letter requesting the opinion reads as follows:

> "A constituent of mine, Mr. Louis Arno, has asked me to present to the House Appropriations Committee a claim for damages in the sum of $2486.00, arising out of a fire at his place on Bellefontaine Road on August 14, 1950. Two inmates of Bellefontaine Farms have admitted that they started the fire. Mr. Columbo, Chairman of the Committee, was doubtful about the state's liability in such a case and asked that I request an opinion from your office in that connection.
>
> "I would greatly appreciate your advising me on the state's position in this matter at your early convenience, so that if it be a legitimate claim against the state it may be incorporated in the omnibus bill which is in the course of preparation."

Honorable Charles A. Witte

The St.Louis Training School for the care and treatment of feeble-minded and epileptic persons was created and exists by virtue of the provisions of Section 202.590, RSMo 1949.

The object of the Missouri State School is defined in Section 202.600, RSMo 1949, to be to secure the humane, curative, scientific and economical treatment and care of the feeble-minded and epileptics, exclusive of dangerous epileptics. This section further provides for acquiring a tract of fertile and productive land with such healthful and convenient environments as will accomplish the objects of the school. Bellefontaine Farms, it is said, is so used.

Section 202.610 of our 1949 Revision provides that there shall be received and gratuitously supported in the Missouri state schools (which includes this school) feeble-minded and epileptics residing in the State, who, if of age, are unable, or if under age, whose parents or guardians are unable to provide for their support therein, and who shall be designated as state patients.

Your letter states that a resident property owner of your Senatorial District on August 14, 1950, suffered loss and damage to his property on Bellefontaine Road in the alleged sum of $2486.00 by a fire which destroyed certain of his property and which fire, the letter recites, was of incendiary origin, the setting of which, the letter states, has been admitted by two inmates of said Bellefontaine Farms.

The specific question you submit in your request for this opinion is, whether the State is liable in such a case for the acts of inmates of a public institution, such as the Missouri State School, and if the State is liable may an appropriation for the reimbursement of the owner of such property for his loss and damage, be included as a legal claim against the State in the omnibus bill pending before the present Legislature of this State.

Several legal principles are here involved in the question of whether the instant effort to obtain this appropriation is a legitimate or legal claim:

1) Whether the claim does constitute a cause in favor of the claimant and against the State which could be determined at law by judicial process;

2) Whether the appropriation, if made, would be in violation of the first clause of Section 38 (a), Article III of our present Constitution which prohibits the granting of public money to a private person, and,

3) Whether inclusion of such claim in the omnibus bill in the form of an appropriation would violate Section 23 of Article III of the present Constitution, which reads as follows:

> "No bill shall contain more than one subject which shall be clearly expressed in its title, except bills enacted under the third exception in section 37 of this article and general appropriation bills, which may embrace the various subjects and accounts for which moneys are appropriated."

The Appellate Courts of this State have not defined a "legal claim" against the State, so far as we have been able to learn.

59 C.J. page 282, Section 429, defines a "legal claim" as follows:

> "* * * A 'legal claim' against the state is one recognized or authorized by the law of the state, or which might be enforded at law if the state were a private corporation. Within the meaning of statutory or constitutional provisions relating to their presentation and allowance, the term 'claims against the state' refers to a legal claim, a claim as of right, and generally it is further limited to claims arising out of contract, where the relation of debtor and creditor exists. * * * ."

The Supreme Court of the State of Montana gave a very clear definition of what constitutes a "legal claim" against a State in the case of Mills vs. Stewart, 247 Pac. Rep. 332. That Court, l.c. 335, defined the phrase "legal claim" as follows:

> "* * * If the term 'legal claim' as applied to a state has any meaning, it must refer

> to a claim which is recognized or authorized by the law of the state, or one which might be enforced in an action at law if the state were a private corporation. * * * ."

It is, we believe, undisputed in every jurisdiction, that the State may not be sued without its consent. 59 C.J. 300, 301, states the following on this rule:

> "A state, by reason of its sovereignty, is immune from suit and it cannot be sued without its consent, in its own courts, the courts of a sister state, or, by an individual, in the federal courts. * * *."

Our Supreme Court in the case of Merchants Exchange vs. Knott, et al., Railroad and Warehouse Commissioners, 212 Mo. 616, l.c. 647, in harmony with the last quoted text from Corpus Juris, said:

> "* * * That the sovereign State may not be sued is a truism. * * * ."

In holding that neither the State nor its public hospitals as governmental agencies of the State may be held liable for the negligence or misconduct of its employees, 30 C.J. 465, Section 14 B, states the following text:

> "In the absence of statutory provision to the contrary a hospital created and existing for purely governmental purposes and under the exclusive ownership and control of the state is not liable for injuries to a patient caused by the negligence or misconduct of its employees, or for personal injuries sustained by an employee, although a statute may declare it to be a corporation which may sue and be sued. Nor is the state liable."

For like reasons and under like authority which uphold the State's non-liability for the negligence of its officers or agents, the State is also held not liable for the torts of such officers or agents. 59 C.J. 194, on this principle states the following:

> "A state is not liable for the torts of its officers or agents in the discharge of their official duties unless it has voluntarily assumed such liability and consented to be so liable, * * * ."

The above quoted text of Corpus Juris, footnote 34, cites the Missouri case of Cassidy vs. City of St. Joseph, 247 Mo. 147. In harmony with such text, our Supreme Court, in that case, l.c. 205, 206, upholding the bar against liability of the State or its agencies in an action for damages for the non-feasance, misfeasance or malfeasance of its agents or officers in the performance of their governmental acts held:

> "Neither the State nor those quasi-corporations consisting of political subdivisions which, like counties and townships, are formed for the sole purpose of exercising purely governmental powers, are, in the absence of some express statute to that effect, liable in an action for damages either for the non-exercise of such powers, or for their improper exercise, by those charged with their execution. This applies alike to the acts of all persons exercising these governmental functions, whether they be public officers whose duties are directly imposed by statute, or employees whose duties are imposed by officers and agents having general authority to do so. * * * ."

In 1941, in the case of Todd vs. Curators of the University of Missouri, 347 Mo. 460, our Supreme Court reaffirmed this doctrine of the non-liability of the State or its governmental agencies for damages when acting in a governmental capacity. The Court in restating the rule, l.c. 464, 465, held:

> "Our Constitution recognizes higher education as a governmental function and vests the government of the State University in a Board of Curators under the control of the State. (Mo. Const., Art. XI, Sec. 5.)

"In Head v. The Curators of the University of Missouri, 47 Mo. 220, on page 224, this court said: 'The university is clearly a public institution, and not a private corporation. . . . The State established an institution of its own, and provided for its control and government, through its own agents and appointees.' Again, on page 225; '... By establishing the university the State created an agency of its own, through which it proposed to accomplish certain educational objects. In fine, it created a public corporation for educational purposes--a State University.'

"In the absence of express statutory provision, a public corporation or quasi corporation, performing governmental functions, is not liable in a suit for negligence. (Cochran v. Wilson, 287 Mo. 210, 229 S.W. 1050; Dick v. Board of Education (Mo.), 238 S.W. 1073; Krueger v. Board of Education, 310 Mo. 239, 274 S.W. 811, 40 A.L.R. 1086; Robinson v. Washtenaw, Circuit Judge, 228 Mich. 225, 199 N.W. 618; Reardon v. St. Louis County, 36 Mo. 555; Clark v. Adair County, 79 Mo. 536; Moxley v. Pike County, 276 Mo. 449, 208 S.W. 246; Lamar v. Bolivar Special Road District (Mo.), 201 S.W. 890; State ex rel. v. Allen, 298 Mo. 448, 250 S.W. 905; Zell v. St.Louis County, 343 Mo. 1031, 124 S.W. (2d) 1168; Bush v. State Highway Commission, 329 Mo. 843, 46 S.W. (2d) 854; Broyles v. State Highway Commission (Mo. App.), 48 S.W. (2d) 78; Arnold v. Worth County Drainage District, 209 Mo. App. 220, 234 S.W. 349; D'Arcourt v. Little River Drainage Dist., 212 Mo. App. 610, 245 S.W. 394.)

"A statutory provision that such a public corporation 'may sue and be sued' does not authorize a suit against it for negligence. '.. . But the waiver by the State for itself or its officers or agents of immunity from an action is one thing. Waiver of immunity from liability for the torts of the

> officers or agents of the State is quite another thing.' (Bush v. Highway Commission, 329 Mo. 843, l.c. 849, 46 S.W. (2d) 854. See also Hill-Behan Lumber Co. v. State Highway Commission, 347 Mo. 671, 148 S.W. (2d) 499, and cases cited, supra.)
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> "The cases heretofore cited are mainly based upon the principle that a public corporation, performing governmental functions, is an agency or arm of the State and entitled to the same immunity as the State itself, in the absence of express statutory provision to the contrary. * * * ."

Our Kansas City Court of Appeals in the case of Whittaker vs. Hospital, 137 Mo. App. Rep. 116, had the question before it for decision whether the hospital was liable for an injury to an employee caused by the negligence of the institution. In holding that a governmental agency, such as a charitable hospital, could not be held to respond in damages for the negligence of its employees or trustees, the Court, l.c. 120, said:

> "* * * Two rules of law, both founded on motives of public policy, come into conflict here; the rule of <u>respondeat superior</u> (or if not technically that, one akin to it) and the rule exempting charitable funds from executions for damages on account of the misconduct of trustees and servants. As both rules rest on the same foundation of public policy, the question is whether, on the facts in hand, the public interest will best be subserved by applying the doctrine of <u>respondeat superior</u> to the charity, or the doctrine of immunity; and we decided this cause for respondent because, in our opinion, it will be more useful on the whole not to allow charitable funds to be diverted to pay damages in such a case; and, moreover, the weight of authority is in favor of this view, as expressed not only in cases where the parties seeking damages were patients in the institution, but where they were not. * * * ."

The case of Zummo vs. Kansas City, 285 Mo. 222, was before the Supreme Court in a suit to recover damages against the city for the death of a patient caused by an insane patient in the city hospital of Kansas City, Missouri. The trial court sustained a demurrer to the plaintiff's petition on the ground that the petition did not state a cause of action and that, therefore, the city was not liable. The Supreme Court upon an appeal, affirming the judgment of the Circuit Court, and denying recovery, l.c. 231, referring to the hospital, held:

> "* * * In these respects it is the arm of the State government, including the use of its legislative powers so far as consistent with the Constitution and laws of the State. This being the case the same exemption enjoyed by the State itself from liability for damages inflicted by its officers and agents in the performance of similar duties attaches to the defendant city. For these purposes it is not merely an agency of the State but is, under the Constitution which is the authority for its existence, an integral part of the State government, and partakes of its immunities as well as its duties."

Considering the above authorities it appears to be clear that, under the facts revealed in this case, the loss suffered by the owner of the property destroyed by fire occasioned by the two inmates of Bellefontaine Farms at St. Louis, Missouri, does not, considering the first legal principle named herein, constitute a "legal" or "legitimate" claim against the State. It is apparent that under these authorities the claim made to the Legislature for an appropriation could not be enforced in an action at law against the State and that since there is no statute in force in this State giving express authority to sue the State or its governmental agencies in such cases, an appropriation act if enacted by the Legislature would constitute a grant or gift of public money to an individual. This would be in violation of Section 38 (a), Article III of the present Constitution of this State which, in part, reads as follows:

> "The general assembly shall have no power to grant public money or property, or lend or authorize the lending of public credit, to any private person, * * * ."

In support of this constitutional prohibition in the case of State ex rel. vs. Board of Trustees, 184 S.W. 929, the Kansas City Court of Appeals, l.c. 933, said:

> "* * * It is a fundamental principle of the law of this state that public money shall not be paid to a private individual for something wholly disassociated from the interests of the public itself. * * *."

The first clause of Section 38 (a) of Article III of our present Constitution is a rephrasing of parts of Sections 45 and 46 of Article IV of the Constitution of this State, 1875, particularly Section 46. The Supreme Court of Missouri discussed and construed said Section 46 in Kavanaugh, et al. vs. Gordon, State Auditor, 244 Mo. 685. The case was a proceeding in injunction by Kavanaugh and others as taxpayers against the State Auditor to enjoin the auditing of the accounts and drawing warrants in favor of one Nolen, named a "special agent" of the State and Missouri Waterways Commission and to prevent the payment to Nolen of $7000.00 for alleged salary and expenses out of a total appropriation of $17,000.00 made to the said Commission. The case was based upon the grounds that Nolen was not a public officer, was performing no governmental duties for the State in his pretended employment, and that the payment to him, if made, would constitute a gift and grant of public money to an individual, and that that part of the appropriation was unconstitutional and void. The Supreme Court so held and in its opinion, l.c. 721, 722, said:

> "* * * We will assume, as already held, that Nolen was not an officer, filling a public office. Attending to the language of the challenged part of the act, it is apparent he was not dealt with as a creditor of the State with a claim due to be paid by an appropriation in a bill. * * * * * * * * * Minus official orbit, he is a wandering star in Missouri governmental heavens. In that view of it, we can come to no conclusion except that he is dealt with <u>as an individual</u>. Hence the provision that $7000 of the $17,000 appropriated to the commission must be paid to him on his own vouchers, amounted in reason and law to an out-and-out gift to him as an individual of $7000 of the

> State's money in violation of Sec. 46, Art. 4, of the Constitution, supra. * * * ."

There are other decisions by our Supreme Court to the same effect in the Court's construction of the terms of Section 46 of Article IV of the 1875 Constitution of this State, but we believe the above cited authorities will suffice to clearly demonstrate that under the terms of said Section 38 (a), Article III of the present Constitution, an appropriation to pay the owner for the alleged loss of his property by reason of the alleged acts of the inmates of Bellefontaine Farms, a State institution, would, considering the second legal principle here being discussed, be in conflict with said Section 38 (a) by granting public money to a private person.

We now come to the consideration of the third principle of law involved in the determination of whether the proposed appropriation in this case is legal. Section 23 of Article III, supra, of our Constitution, provides that no Bill shall contain more than one subject. The section prescribes that that subject shall be clearly expressed in the title of the Bill, except Bills enacted under the third exception to Section 37 of Article III. Section 37, Article III, deals with the question of contracts creating a debt or obligation upon the State through the issuance of bonds.

Our Supreme Court in the case of State ex rel. vs. Smith, 175 S.W. (2d) 831, gave its construction of Sections 48 and 44 of the 1875 Constitution which sections were in much the same language, although abbreviated, as is now said Section 37 of Article III of the present Constitution. The Court especially construing said Section 44 of said Article IV, l.c. 833 (2) in the latter sentence thereof said:

> "* * * This section is a restriction on the power of the legislature to raise revenue through the issuance of bonds and otherwise."

The question here is not related to the issuance of bonds or the authority to be put in operation, or the restrictions to be observed, incident to their issuance, as provided in said Section 37, including the exception provided in exception (3) thereof. We may then safely take the position,

we believe, that the first clause of Section 23 of Article III, supra, is not limited or circumscribed by exception (3) of said Section 37 of said Article III nor any reference thereto, by the exception noted in Section 23 of said Article III in the consideration of the question before us. From this viewpoint we will proceed to determine whether the acknowledgment of an obligation against the State in favor of the owner of the property so alleged to have been destroyed, by the inclusion in the proposed Omnibus Bill of an appropriation of public funds to pay the owner of such property for his loss, is in conflict with the said first clause of Section 23 of said Article III in that the proposed Omnibus Bill would contain more than one subject not clearly expressed in the title.

The acknowledgment of the liability of the State in occurrences of the character here being considered would be a subject and legislation thereon in the nature of general legislation. An appropriation from the general revenue of the State if included in the Omnibus Bill, to pay the loss to the property owner in this instance, would itself be, we believe, an acknowledgement of such liability. The proposed Omnibus Bill would then constitute legislation on two subjects in one Act. The first clause of Section 23 of Article III of our present Constitution prohibits such legislation. Our Supreme Court has had occasion in numerous cases to construe the same terms now appearing in the first clause of Section 23 of Article III of the present Constitution as Section 28 of Article IV of the Constitution of 1875. We shall cite and quote from some of such decisions in which it is held that no bill shall contain more than one subject and that legislation of a general nature may not be included in an Appropriation Bill.

This question was before our Supreme Court in State ex rel. vs. Smith, 75 S.W. (2d) 828. The suit was in mandamus to compel the State Auditor to issue a warrant for the payment for personal services rendered by relator as a member of the State Board of Barber Examiners. The Legislature at its Extra Session, which convened in October, 1933, appropriated out of the State treasury, chargeable to the general revenue, the sum of $3,000.00 to the Board of Barber Examiners' Fund. The opinion recites, however, that although the $3,000.00 so appropriated was actually transferred to the Barber Examiners'

Fund that the sum had not been used, and was at the time of the institution of the suit, in the State Treasury to the credit of the Board of Barber Examiners' Fund. The relator claimed there was due him out of said sum, the sum of $125.00. The relator presented to the State Auditor a statement, setting forth the services rendered, the amount due therefor, with the approval of the Secretary of the Board, and requested a warrant upon the State Treasurer in payment thereof. The State Auditor refused payment because Section 13525, R.S. Mo. 1929, provided that the salary of the members of the Board as well as all expenses, should be paid out of a fund created from fees collected by the Board or its Treasurer, and out of that fund only, and for that reason the Legislature had no authority to appropriate money out of the General Revenue Fund to pay such expenses. The opinion recites that the Legislature might have provided that the salary and expenses of the Barber Board might be paid out of the General Revenue, but that it did not do so, but, on the contrary, stated that such expenses should be paid out of the special fund named, and out of that fund only, and that the attempt to pay for such services out of the General Revenue Fund was contrary to said Section 13525. The Court, in holding that the effect of the appropriation of the $3,000.00 out of the General Revenue Fund for the payment of such expense of said Board was in the nature of general legislation and could not be included in an Appropriation Act and was invalid as in conflict with Section 28 of Article IV of the then existing Constitution, l.c. 830, said:

> "It cannot be said that the act appropriating $3,000 from the general revenue fund to the board of barber examiners' fund amounted to an amendment of section 13525, R.S. 1929 (Mo. St. Ann. Sec. 13525, p. 637). It does not attempt to amend that section. Its sole purpose was to appropriate $3,000 from one fund to another. It reads as follows:
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> "'There is hereby appropriated out of the state treasury, chargeable to the general revenue fund, the sum of three thousand ($3,000.00) dollars to the Board of Barber Examiners Fund.' (Laws 1933-34, p. 12, Sec. 12B).
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> "Besides, legislation of a general character cannot be included in an appropriation bill. If this appropriation bill had attempted to

> amend section 13525, it would have been void in that it would have violated Section 28 of article 4 of the Constitution which provides that no bill shall contain more than one subject which shall be clearly expressed in its title. There is no doubt but what the amendment of a general statute such as section 13525, and the mere appropriation of money are two entirely different and separate subjects. * * * ."

The Revised Statutes of this State, 1929, included Section 9622, providing that in case Lincoln University at Jefferson City, Missouri, a university for the education of colored students, did not furnish opportunity to colored students for legal training equal to that furnished white students at the University of Missouri, the Board of Curators of Lincoln University could pay the reasonable tuition fees of such colored students, residents of Missouri, for attendance at the university of any adjacent State.

The Legislature of 1935 (Laws of Missouri, 1935, page 113, Section 60) passed the following Act, to-wit:

> "* * * 'There is hereby appropriated out of the State Treasury chargeable to the general revenue fund for the years 1935 and 1936, the sum of Ten Thousand Dollars ($10,000.00) to be used in paying the tuition of negro college students to some standard college or university not located in Missouri, * * * provided that the total amount paid shall not exceed the difference between the registration and incidental fees charged by the University of Missouri to resident students and the school attended for similar courses.'"

The Supreme Court in the case of State ex rel. Gaines vs. Canada, 113 S.W. (2d) 783, construed both Sections 9622, R.S. Mo. 1929, and Section 60 of the Act of 1935 (Laws of Missouri, 1935, page 113). The enactment of said Section 60, the Court held, was in the nature of general legislation which could not be combined in the same Act with an appropriation because it was contrary to the terms of Section 28 of Article IV of the then existing Constitution of this State. The Court in so holding, l.c. 790, said:

> "* * * A general statute (section 9622, R.S. 1929 (Mo. St. Ann. Sec. 9622, p. 7328)) authorizes the board of curators of Lincoln University to pay the reasonable tuition fees of negro residents of Missouri for attendance at the university of any adjacent State. This statute cannot be repealed or amended except by subsequent general legislation. Legislation of a general character cannot be included in an appropriation bill. To do so would violate section 28 of article 4 of the Constitution, which provides that no bill shall contain more than one subject which shall be clearly expressed in its title. There is no question but what the mere appropriation of money and the amendment of section 9622, a general statute granting certain authority to the board of curators, are two different and separate subjects. * * * ."

An original proceeding in mandamus was before our Supreme Court in State ex rel. vs. Thompson, 289 S.W. 338. The facts recited in the opinion were that relator, Hueller, on February 22, 1925, was appointed an Assistant Commissioner of the Permanent Seat of Government of this State at a monthly salary of $135.00. The Board of Permanent Seat of Government later by order at a meeting of the Board increased the compensation of relator to $150.00 per month. Respondent, Thompson, State Auditor, refused to pay relator's compensation at the increased figure. Relator refused to accept any other sum and later instituted the action. The General Assembly of 1925 (Laws of Missouri, 1925, page 36, et seq.) later passed an Act, Section 100 of which Act read as follows:

> "* * * No salary for any official or employee, either elective or appointive, provided for by this appropriation act, shall be in excess of the salary provided by statutory law for such official or employee, and in all cases where the salary of any such official or employee is not definitely fixed by statutory law, no salary paid by virtue of this appropriation act shall be in excess of the salary paid to the officer or employee holding such position the previous biennium."

The authority creating the Board of Permanent Seat of Government with certain powers conferred upon it was in Chapter 84, R.S. Mo. 1919, and amendments thereto. An Act passed by the General Assembly (Laws of Missouri, 1923, page 301) enjoined upon the Board the duty of protecting and caring for the State's property, including the capitol building at the seat of government and the employment and fixing the salaries of officers and employees of the Board. This being true, the opinion recites, the Board had the right to increase the salary of relator unless it was precluded from so doing by certain provisions of said Section 100, supra, (Laws of Missouri, 1925). The decision of the Court was that said Section 100 of the Appropriation Act was unconstitutional and void because it sought to fix the salaries of all such officers or employees affected by the Appropriation Act. The Court held the remainder of said Act of 1925 (Laws of Missouri, 1925, page 36, et seq.) valid. In holding said Section 100 invalid, the Court, l.c. 340 and 341, said:

> "It is manifest that the real purpose of this provision was an undertaking to regulate, determine, and fix the salaries of all such officers or employees affected by the Appropriation Act whose compensation might not be fixed at all by statutory law, or, if at all, where the statute fixed a maximum only. This provision has no other character than that of general legislation, and to inject general legislation of any sort into an appropriation act is repugnant to the Constitution (article 4, sec. 28, Constitution of Mo.), and the appropriation bill, as provided by the Constitution (article 4, section 28), may have a plurality of subjects, while a bill for general legislation may have but one.
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> "An appropriation bill is just what the terminology imports, and no more. Its sole purpose is to set aside moneys for specified purposes, and the lawmaker is not directed to expect or look for anything else in an appropriation bill except appropriations. * * * .
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> "Our Constitution (section 28, art. 4) is the

> one certain safeguard against such distracting possibilities and should be strictly followed. We hold, therefore, that section 100 of the Appropriation Act, under our Constitution, is unconstitutional and void, and it follows that our preemptory writ of mandamus should be granted."

If this appropriation should be enacted and liability of the State be admitted it would be legislation of a general character and would constitute a statute fixing liability upon the State in such cases. The Legislature does have the right to pass general legislation providing for the fixing of liability upon the State in such cases, but it has not done so, and, under the above authorities cited and quoted, this cannot be done in an Appropriation Act. We believe there is no question but what admitting the fact of liability upon the State and the appropriation of money to pay such liability are two distinct subjects.

If the claim upon which the Appropriation Act here considered is based is not a legal or legitimate claim against the State, and we hold herein that it is not legitimate or legal, were allowed as a part of the Omnibus Bill now pending before the General Assembly, the Comptroller would be prohibited from certifying it to the State Auditor and the State Treasurer for payment under the terms of Section 33.200, RSMo 1949, which reads as follows:

> "If the comptroller shall knowingly certify any claims or accounts for payment by the auditor, not authorized by law, he shall, upon conviction thereof, be deemed guilty of a felony, and upon conviction shall be punished by imprisonment in the penitentiary for not less than two years nor more than five years."

In consideration of the above authorities it is clear, we believe, that the proposed claim is not a legitimate claim against the State; that there is no statute in this State fixing liability upon the State for the acts of officers or agents of the State or for the acts of inmates of the State's corrective or rehabilitation institutions such as the said Bellefontaine Farms; that the appropriation, if made in this instance, would be the grant and payment of public money to an individual in

violation of Section 38 (a) of Article III of the Constitution of this State; that the appropriation, if made, would be unconstitutional and contrary to the terms of Section 23 of Article III of the Constitution, and that if such an Appropriation Act were passed in the light of the authorities herein cited and quoted, the Comptroller is prohibited by said Section 33.200 from giving it his approval and certification to the State Auditor and State Treasurer for payment; and, that for these reasons the said subject of such appropriation should not be included in the said proposed Omnibus Bill.

CONCLUSION.

It is therefore the opinion of this department considering the above cited authorities and for the foregoing reasons, that a claim for damages against the State by the owner of property destroyed, if it was so destroyed, by an incendiary fire occasioned by inmates of Bellefontaine Farms, a part of the equipment of the Missouri State School for feeble-minded and epileptic persons at St. Louis, Missouri, a State institution, is not a legal claim against the State.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
Attorney General

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