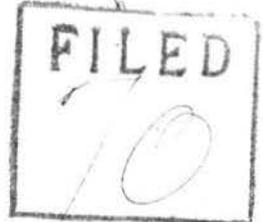


Optometry Board:

1. Expenses of Board for witness fees, mileage, etc. can be paid.
2. Board not entitled to expenses for travelling investigator of unlicensed operators.

February 16, 1934

2-17-34



Mr. John J. Pardue,
c/o State Auditor,
Capitol Building,
Jefferson City, Missouri.

Dear Mr. Pardue:

We have received your letter of January 30, 1934 in which was contained a request for an opinion as follows:

"I want an opinion from your office in regard to the payment for the Optical Department of the State for witnesses' fees, milage, affidavits, and all other things pertaining to law suits to drive out the unlicensed operators. They also want to send a man from county to county investigating unlicensed operators with expenses paid for same.

I must have your opinion before I can pay these expenses. Please let me have this at your earliest opportunity."

With regard to your first question concerning the payment of witness fees, mileage, etc., we are of the opinion that such expenses can be paid from the money appropriated to the use of the Board of Optometry. See Laws 1933 page 93, section 7. In subsection D thereof, \$5208.00 is appropriated for operation and general expenses, and the above mentioned items should certainly be classed as general expenses of such board.

Section 13498 R.S. Mo. 1929 provides in part as follows:

"The president and secretary shall have the power to administer oaths and the board to take testimony in all matters relating to its powers and duties, and for that purpose shall be able to compel the attendance of witnesses and the production of all necessary books, papers, or documents, upon the proper service of a subpoena in proper form, duly attested."

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Section 13509 R. S. Mo. 1929 provides in part as follows:

"Upon the hearing of any such proceeding, the state board of optometry may administer oaths, and may procure by its subpoena, the attendance of witnesses and the production of relevant books and papers. Any circuit court or any judge of a circuit court, either in term time or in vacation, upon application either of the accused or of the state board of optometry may, by order duly entered, require the attendance of witnesses and the production of relevant books and papers before the state board of optometry in any hearing relating to the refusal, suspension or revocation of certificate of registration."

The above statutory sections are contained in Chapter 101, R. S. Mo. 1929, said chapter being entitled "State Board of Optometry." It will be noticed that while the board is given power to compel the attendance of witnesses, no provision is made for the expense necessarily attendant upon such procedure. Clearly the legislature must have intended that the board should have power to pay these expenses else the nullity of granting a power without the means to use same would result. We are of the opinion that where a power is granted to an officer or a board, that all authority necessary to the effective use of such power is impliedly granted.

In the case of State ex rel Bybee vs Hackmann, 207 S.W. 64, which case was decided by the Supreme Court of Missouri en banc, the court at page 65 stated as follows:

"For it is fundamental that no officer in this state can pay out the money of the state, except pursuant to statutory authority authorizing and warranting such payment. Lamar Tp. v. Lamar, 261 Mo. 171, 169 S.W. 12, Ann. Cas. 1918D, 740. But it is also well-settled, if not fundamental, law that, whenever a duty or power is conferred by statute upon a public officer, all necessary authority to make such powers fully efficacious, or to render the performance of such duties effectual is conferred by implication. Hannibal, etc. Railroad v. County Court, 36 Mo. 303; Walker v. Linn Co., 72 Mo. 650; Sheidley v. Lynch, 95 Mo. 487, 8 S.W. 434."

This decision was approved in State ex rel Bradshaw vs Hackmann, 208 S. W. 445 at pages 447-448.

Under the above decisions, which in our opinion may be taken to apply to boards as well as to officers individually, the board in question should certainly be allowed the witness expenses. In addition, the payment of such expenses can clearly be brought within the terms of the Appropriation Act above referred to, and should be paid from such appropriation.

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Feb. 16, 1934.

As to your second question concerning the right or power of the board to have the expenses of a travelling investigator paid, we are of the opinion that the board has no such right or power. An examination of the statutory sections concerning the Board of Optometry and its powers discloses no such right or power granted, nor is there any provision from which, as in the question above discussed, any such right or power could be inferred. We are relegated, therefore, to the basic principle of law as held in the case of Lamar Township vs. City of Lamar, 261 Mo. 171, and referred to in the Bybee case above cited that no money of the state can be paid out except pursuant to statutory authority authorizing the payment of same.

In addition, Article X, Section 19, of the Constitution of Missouri, provides in part as follows:

"Sec. 19. MONEY TO BE PAID AS APPROPRIATED--
LIMIT--HOW CONTINUED--RECEIPTS AND EXPENDITURES.- 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."

We are of the opinion that not only is there no provision in the Board of Optometry statutory sections allowing this right or granting this power but also that the Appropriation Act above referred to does not include same within its purvey; hence, the above constitutional prohibition arises as well. It is true that the Appropriation Act refers in part to "general expenses", but we construe such to include only such expenses as may arise in a usual routine way, and not to include expenses incurred in the instituting and carrying out of an entirely new and unauthorized procedure. Since, therefore, both the lack of statutory authority and the constitutional section militate against this proposition, we are constrained to hold that it cannot be accomplished.

Very truly yours,

CMHjr-LKL

APPROVED:

CHARLES M. HOWELL, Jr.
Assistant Attorney-General.

Attorney-General.