

ELEEMOSYNARY BOARD:
INSPECTION OF CITY HOSPITALS:
RESPONSIBILITY OF ELEEMOSYNARY
FOR PATIENTS IN ST. LOUIS
CITY HOSPITAL:

Board of Managers of
Eleemosynary Institutions,
or the President of the
Board, may inspect St.
Louis City Sanitarium

when it deems advisable for verifying claim
of such institutions for state aid. The
Board has no legal responsibility either
for the conduct of patients in such institu-
tion or for inspection and investigation
of the sanitarium as a subsidiary

January 21, 1938

Honorable W. Ed Jameson
President
Board of Managers
State Eleemosynary Institutions
Jefferson City, Missouri



Dear Sir:

This office acknowledges your request dated
January 15, 1938, for an official opinion, which is as
follows:

"I inclose you herewith a resolu-
tion or suggestion made at the
last meeting of the Eleemosynary
Board with reference to a ap-
propriation of \$600.00, shown by
Sec. 71-B, page 140, Laws of Mo.
1937, on the basis of \$8.00 per
month. Would also like to make
reference to page 221, Laws of
Mo. 1931, Sec. 1, 2 and 3.

"Will you kindly have your office
furnish me with an opinion with
reference to Sec. 2, where it
reads: 'The State Eleemosynary
Board shall have authority to
examine, by proper medical authori-
ty, any or all such institutions
for the insane.' What I would like
to know is if this is optional
upon the part of the Eleemosynary
Board or is it mandatory?

"Also, referring to Sec. 71-B,
page 140, Laws of Mo. 1937 which

reads, 'Provided that the State Auditor shall not audit and the State Treasurer shall not pay any claims out of this appropriation unless such claim has been approved by the Board of Managers of the State Eleemosynary Institutions.' Will you also advise me whether it is mandatory or optional whether I shall personally visit this institution at least once each quarter, as I have to do with reference to the Jasper County Hospital in Webb City?

"If I have not made myself clear or intelligible in conveying to you what I want, please remember I am not a lawyer and, therefore, would be glad to discuss it with you personally if this inquiry does not give you sufficient data upon which to furnish me with this opinion. "

"The St. Louis City Sanitarium's operative accounts are approved by the State Eleemosynary Board for the 1937-1938 biennium is \$600,000. It was suggested by Mr. Griffin that the Chairman ask for an opinion from the Attorney General as to whether the Eleemosynary Board has any legal responsibility for the conduct of patients in this institution, and also as to the inspection and investigation of this institution as a subsidiary."

I

The St. Louis City Sanitarium is one of the institutions belonging to and operated by said city by authority of subsection (b) of Section 14 of Article XIII of the charter of the city of St. Louis, Missouri, which is as follows:

"There shall be a division of hospitals which shall include and have under the charge and supervision the operation and maintenance of all hospitals, infirmaries, medical laboratories, dispensaries and other charitable institutions in the city. The head of such division shall be known as the hospital commissioner."

The Legislature, in 1931, passed an act providing for partial state support for inmates of hospitals maintained by cities or counties, which act is as follows (Section 1, page 221, Laws of Missouri 1931):

"Any county or city in this state which shall maintain from public funds a hospital for the care, detention or treatment of the insane, which hospital is properly equipped as to facilities, staff and personnel, shall be entitled to \$8.00 per month per patient, upon proper report filed and sworn to by superintendent or surgeon in chief of such hospital for the insane, when such proper report is filed with the eleemosynary board. Such reports shall be filed quarterly and shall show name,

address and other necessary data so as to properly identify and authenticate the patients of such insane institution."

Section 2 of said Act is as follows:

"The state eleemosynary board of Missouri shall have authority to examine by proper medical authorities any and all such institutions for the insane, so as to determine if said hospital is efficiently equipped and if said list as filed by the superintendent is correct and authentic and shall have power to make suggestions where they find conditions which need correction or improvement."

Section 3 of said Act is as follows:

"Upon receipt of sworn statement of the superintendent or surgeon chief of such hospitals for the insane, state treasurer shall pay over to the county treasurer or city treasurer or any county or city containing such hospital for the insane, the sum of \$8.00 per month per patient out of the general revenue funds of the state or any other funds which may be provided or set aside for this purpose."

Section 287, page 1031, Volume 46, of Corpus

Juris, states the rule as to public officers as follows:

"The powers and authority of public officers are fixed and determined by the law. * * *"

When the Legislature made the appropriation in 1937 for the biennium period for partial support by the State of counties or cities maintaining approved hospitals for insane, it placed the following proviso in Section 71-B, page 140, Laws of Missouri 1937, of the Appropriation Act:

"Provided that the State Auditor shall not audit, and the State Treasurer shall not pay any claim out of this appropriation unless such claim has first been approved by the President of the Board of Managers of State Eleemosynary Institutions."

But Section 2 of the Act of 1931 cited above, for the purpose of determining that the hospital claiming state funds for partial support is efficiently equipped and if the list of insane persons in such hospitals is correct and authentic, gave the eleemosynary board authority to make examination of such hospitals as the Appropriation Act required the approval of the President of the Board of Managers of the Eleemosynary Institutions on all claims of such hospitals for State aid before being audited and paid, and it would be necessary for the President of the Board of Managers or some member thereof to make an inspection of such hospital for determining the correctness of the report unless the President of the Board of Managers was willing to take the report as correct without an inspection.

CONCLUSION

It is, therefore, the opinion of this department

that unless the President of the Board of Managers of the Eleemosynary Institutions is willing to accept as correct the claims of the St. Louis City Sanitarium, or any other hospital maintained by cities or counties in the State, it is mandatory upon him or some member of the Board of Managers of Eleemosynary Institutions to make an examination of such institutions to determine whether they are efficiently equipped and if the list of insane persons filed by such hospital is correct and authentic, and to determine that the hospital is complying with the suggestions the Board may make for correction or improvement of the conditions of such hospital.

II

On the question of whether the Board of Managers of Eleemosynary Institutions has any legal responsibility for the conduct of the patients in the St. Louis City Sanitarium and also as to the inspection and investigation of that institution as a subsidiary, we find that Section 226, page 145, 59 Corpus Juris, provides as follows:

"In accordance with general rules, state officers acting in good faith and within the scope of their authority are not liable individually for the official acts of omissions, as in connection with performance of discretionary or ministerial duties; but state officers may be held personally liable for their unauthorized acts, as for misfeasance or positive wrong to third persons in the discharge of their official functions, or for culpable negligence."

Reviewing the act authorizing such hospitals as the St. Louis City Sanitarium to receive aid from the State for their support, it appears that the only jurisdiction the Board of Managers of the Eleemosynary Institutions exercises over such institutions as the St. Louis City Sanitarium is that which it acquires for the purpose of determining whether such hospitals are qualified to participate in the State funds for their support. This act does not give the eleemosynary board any authority or jurisdiction over the insane patients except to determine that on account of their mental condition they may be held in the institution, for each of whom the State pays eight dollars per month for their support.

Section 2 of the act does give the eleemosynary board power to make suggestions where they find conditions which need correction or improvement, but merely making a suggestion for the correction or improvement of the conditions would not impose a personal responsibility on the board for such condition even though the suggestions of the board were not carried out.

The City of St. Louis, by authority of its charter, maintains and operates the City Sanitarium and whatever liability there may be for the conduct of the patients and the way the institution is maintained is upon the City of St. Louis.

CONCLUSION

It is, therefore, the opinion of this department that the Board of Managers of the Eleemosynary Institutions has no legal personal responsibility either for the conduct of the patients in

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the St. Louis City Sanitarium or for the maintenance
of that institution.

Respectfully submitted

TYRE W. BURTON
Assistant Attorney General

APPROVED

ROY MCKITTRICK
Attorney General

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