

PENITENTIARY: transactions between various industries under the control of the Department of Corrections and between the penitentiary and said industries may be handled by a system of debits and credits.

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Hon. Thos. E. Whitecotton
Director of Department of Corrections
Jefferson City, Missouri

Dear Sir:

We have your letter of recent date which reads as follows:

"The Missouri State Penitentiary is, as you know, a unit of the Division of Penal Institutions within the Department of Corrections, the other units being the Intermediate Reformatory and the Women's Branch of the State Penitentiary.

The operation of the Missouri State Penitentiary consists of two divisions, one commonly referred to as 'Industries' and consisting of the Workmen's Clothing Company, Parker Boot and Shoe Manufacturing Company, Missouri Wood Products Company, Auto Tag Company, Missouri Shirt Manufacturing Company, Missouri State Twine Company, Missouri Tobacco Company, and Missouri Cleaning Plant; the other is the 'Penitentiary.'

The General Assembly appropriates funds for the Industries as well as the Penitentiary. The Statutes provide a 'Revolving Fund' and from this the Legislature appropriates specific amounts for the operation of Industries as follows: Personal Service, Additions, Repairs and Replacements, and Operations. The Legislature appropriates for the Penitentiary certain funds from General Revenue which are: Personal Service, Additions, Repairs and Replacements, and Operations. They also appropriate from Earnings of the Penitentiary funds for Personal Service, Repairs and Replacements, and Operations.

The Penitentiary furnishes to Industries inmate laborers as required, for which Industries pays to the Penitentiary one dollar per day for the days worked. This money becomes a part of the Penitentiary Earnings and is encumbered and paid out as appropriated. In the daily operations of Industries and the Penitentiary, it is necessary that many additional transactions be made between these two divisions. For instance, I have before me a purchase order from the Penitentiary directed to Workmen's Clothing for 15 yards of Boat Sail Pocketing, total price \$4.50, to be paid from the Penitentiary Earnings Fund. I have another directed to the Plumbing Shop, State Penitentiary, for plumbing supplies to be furnished the Missouri Wood Products Company amounting to \$132.88, to be paid from the Revolving Fund, chargeable to Repairs and Replacements, Industries. I have another directed to the Parker Boot and Shoe Manufacturing Company for 108 pair men's oxfords, total price \$351.00, to be delivered to the Workmen's Clothing Company. Each of these purchases will terminate in the issuance of a check to the vendor by the State Treasurer after having passed through the Comptroller, the Purchasing Agent and the State Auditor. You will note in the first instance that this transaction represents a purchase by the Penitentiary from Industries; in the second instance, a purchase from the Penitentiary by Industries; in the third instance, a purchase from one factory by another factory, both operated on funds appropriated from the Revolving Fund.

It appears that this method of handling such transactions is an outgrowth of the old contract system formerly in use at the Penitentiary. It is cumbersome, expensive, and produces much additional work in our Accounting Office, as well as those previously mentioned.

We propose to inaugurate a system of ledger accounting with debits and credits to show the cost of operation of the various factories and units of the Penitentiary, as is now in

use between the Penitentiary and the Farms. For example, Industries owes the Penitentiary \$500.00 for inmate labor. The Penitentiary purchases \$450.00 worth of clothing from Industries. Instead of handling these transactions through the Comptroller, Purchasing Agent, State Auditor and State Treasurer, they would be entered on the ledger account showing proper debits and credits. In most instances Industries will pay more to the Penitentiary for inmate labor than the Penitentiary will pay to Industries for merchandise. Therefore, Industries would pay the balance due the Penitentiary through the Comptroller, etc., by a State Treasurer's Check which would become Penitentiary Earnings.

You are referred to Sections 8987, 8988, 9095, 9096, 9097 and 9098, R. S. Mo. 1939, which are the only statutes we are able to find relating to the Revolving Fund and Industrial Operations. We ask your official opinion as to whether the law prohibits or will permit the handling of these transactions as proposed."

As stated in your letter, the Missouri State Penitentiary is now the Division of Penal Institutions within the Department of Corrections. S. C. S. S. B. No. 347, enacted by the 1945 Legislature, created this new department. The following provisions of said act are pertinent to the consideration of your question:

Section 1:

"There is hereby created and established as a department of state government a department of corrections, which may hereafter be referred to as the department. The scope and purpose of the department shall be to supervise and manage the penal, correctional and reformatory institutions of the state, together with certain duties in relation to the training schools and the board of probation and parole, hereafter set out. The department of corrections shall be composed of three divisions, namely:

(1) the division of penal institutions,
(2) the division of educational institutions,
and (3) the board of probation and parole.
The board of penal commissioners, as established
by Article I, Chapter 48, Revised Statutes of
Missouri, 1939, with amendments thereto, is
hereby abolished and discontinued and all powers
and duties over activities and institutions
pertaining to, controlled by and administered
through the board of penal commissioners
shall henceforth be vested in and administered
through the department of corrections, together
with any additional powers and duties which
may herein or hereafter be assigned to the
department."

Section 9:

"The department of corrections may establish
such bureaus as research and statistics,
personnel, finance and other bureaus which
it may deem necessary and desirable in
carrying on the work of the department."

Section 10:

"There is hereby created and established within
the department of corrections a division of
penal institutions. The division of penal
institutions shall be the successor to and
shall possess and exercise all the powers and
duties of the commission of penal institutions
with respect to institutions and activities
pertaining to intermediate and adult offenders,
including all such powers and duties not
specifically repealed by this act, in addition
to possessing other powers and duties estab-
lished by this act."

Section 11:

"In all laws of Missouri or parts thereof,
the words 'department of corrections' shall
be substituted for the words 'commission of
penal institutions' with respect to institu-
tions and activities pertaining to inter-
mediate and adult offenders. Said department
shall hold and exercise control and juris-
diction over all intermediate and adult

correctional and penal institutions and activities in this state, except such powers and duties as may be assigned to the board of probation and parole, supported in whole or in part by the direct appropriation of money out of the state treasury, including the state penitentiary, the women's branch of the state penitentiary, the intermediate reformatory for young men at Algoa, and over any other correctional institution for intermediate and adult offenders as may hereafter be established; and over all the branches of such institutions, and over all the real estate, building, equipment, machinery, facilities and products properly belonging to or used by or in connection with said institutions and branches thereof, and over the activities of these institutions and branches; and the department shall make and enforce such orders and findings as it may from time to time deem necessary and proper in the management of all institutions and persons committed to its control and shall be vested with and possessed with all other powers and duties necessary and proper to enable it to carry out fully and effectively all the purposes of this act."

It will be noticed that the foregoing act does not undertake to legislate as to the details of the management of the institutions under the control of the Department of Corrections, but it merely sets up the organization of the department. Section 1 of the act defines the scope and purpose of the department as being the supervision and management of the penal, correctional and reformatory institutions of the state. Section 9 gives the department authority to establish such bureaus as it may deem desirable in carrying on the work of the department, including a Finance Department. However, the act does not expressly repeal any statutes in existence. By Section 1 it abolishes the Board of Penal Commissioners, but said section also vests all powers and duties over activities and institutions pertaining thereto in the Department of Corrections. Moreover, Section 11 of the act substitutes the words "Department of Corrections" for the words "Commission of Penal Institutions" in all laws of Missouri. It thus appears evident that the legislature by S. B. 347 intended that laws then in force affecting the penal institutions of the state should continue in force but should be carried out by the new Department of Corrections.

Of course, had S. B. 347 made provisions for the details of management of funds, etc, which were directly contrary to the provisions of other laws then in existence, it might be held that the former laws were repealed by implication, but, as pointed out above, said act did not go into details as to the operation of the various institutions.

We must, therefore, look to all statutes which deal with your problem to find the answer to your question. Some of these statutes have been in existence for many years. We shall discuss them as they throw light on your question.

Section 8987 R. S. Mo. 1939, as modified by S. B. 347, Section 11, authorizes the Board of Corrections to acquire lands and erect buildings to be used for the employment of prisoners in the penitentiary. Section 8988 R. S. Mo. 1939 provides in part as follows:

"Said board shall, as soon as practicable, proceed to purchase, lease or otherwise provide suitable plants, machinery and equipment, and to purchase material, for the employment of all able-bodied persons in the Missouri state penitentiary, the Missouri reformatory, the industrial home for girls, the industrial home for negro girls, or any other penal or reformatory institutions hereafter created, for such industries as in the opinion of the board will best occupy such persons, with the view of manufacturing, so far as may be practicable, such articles agreed upon by said board as are needed in any of the institutions hereinabove in this section mentioned or referred to, also such as are required by the state or political subdivisions thereof, in the buildings and offices of the institutions owned, managed, or controlled by the state or political subdivision thereof, also including articles and material to be used in the erection of buildings or other improvements upon, in, or in connection with, any state institutions or state properties, or in the construction, improvement or repairs of any state highways or county highways, including bridges and culverts; including lime to be used for agricultural and other purposes in this state; also including binding twine for use of farmers and others in this state; * * *"

Section 9096, R. S. Mo., 1939, reads as follows:

"Said board shall purchase such raw material as may be required for manufacture of any article in any industry now or hereafter carried on by said board in the penitentiary, on any lands of the state or elsewhere, and shall employ such outside help as may be necessary, and shall be in charge of all articles manufactured by the state, and shall act as distributing agent for the manufacturing enterprises carried on in the institution, with authority to appoint agents or salesmen. It shall have charge of the factories and make such rules and regulations in the operation of the same as it deems best. The superintendent of industries, subject to the rules and regulations of the board, shall be the executive officer of the board, in charge of all industries now or hereafter created or operated by the board, and his salary shall be at the rate of not to exceed five thousand dollars per annum, payable monthly."

It should be noted by the foregoing statutes that the Department of Corrections is in charge of all the industries operated in connection with the penitentiary, with power to make such rules and regulations with respect to the operation of same as it deems best. Each industry is but a unit of the penitentiary and its activities. Under Section 8987, supra, the Department could create more industries or could combine any number or all of such industries into one establishment. In reality, therefore, each industry is but a department of the industrial system of the penitentiary in much the same way that the cutting room would be one department of the shoe factory.

Section 9097 provides for the 'revolving fund' and it reads in part as follows:

"The account or fund heretofore provided for by law, and known as the 'revolving fund,' shall continue to be maintained and known as the 'revolving fund,' which fund, or so much thereof as may be necessary, shall be used only for the purpose of purchasing raw material, machinery or other equipment or in the erection of buildings or making other improvements in plants in connection with the industries carried on or to be carried on in

said penitentiary or on the farm or lands mentioned in section 8987 hereof or elsewhere; and in the manufacturing, handling and marketing of article so produced, until disposed of, according to the provisions of this article; and the money in said 'revolving fund' shall be paid by the treasurer of the state upon warrants issued by the auditor of the state upon verified vouchers of said board."

By the foregoing section the Department of Corrections is required to deposit in the State Treasury the proceeds of any sale of articles manufactured in the industries operated by said department. It is the Department of Corrections that makes the sales and not each individual industry. When one industry requisitions articles manufactured by another industry under the supervision of the department, no sale is in fact made. The manufactured articles have merely been transferred from one department to another department of the industrial system operated by the Department of Corrections. The raw materials purchased for use in manufacturing products by one industry continue to be used by the Department of Corrections even though the finished products are used by another unit of the industries. There has been no sale by the Department of Corrections in such a case, but the materials with which the department is charged are merely transferred from one unit of the industries to another unit of the same industrial system. If a sale for cash is made by the Department of Corrections, then the proceeds of such sale must be deposited in the State Treasury, but where there is merely a transfer of supplies or manufactured articles from one factory to another there has been no transfer of title to such goods, and hence no sale. Money has not actually been spent or received in such a transfer any more than it would be if materials issued to the cutting room of a shoe factory were subsequently assigned to the finishing department of the same factory. We do not believe that transactions between various units of the industrial system operated by the Department of Corrections constitute sales and purchases.

We next consider the other types of transactions mentioned in your letter, that is, the transactions between the penitentiary proper and the industries. As pointed out above, Section 9098 of the statutes requires that all money derived from the sales of articles manufactured in any of the industries shall be deposited in the State Treasury to the credit of the "revolving fund" and the "earning fund". The part

of the money credited to the revolving fund can only be used for the purchase of raw material, machinery and other equipment or in the erection of buildings or making improvements in plants and for outside help in connection with the industries carried on by the Department of Corrections. The "earning fund" is to be used for the operation of the prison.

Section 9099 R. S. Mo. 1939 reads as follows:

"Said commission shall, at the end of each fiscal year, ascertain and determine from the books and records and accounts so kept showing the business operation of the penitentiary, and shall determine what profits, if any, above the actual running and operating expenses of the prison, including the keep of the prisoners, have been made from all business conducted by the state, together with all the revenue received from contracts of such prisoners in accordance with the provisions hereinabove in this article set forth; and if a profit has accrued from all the sources of revenue from the labor of the prisoners in any line and upon any work above the actual running expenses of the prison and the business conducted therein, including the keep of the convicts, then such profits shall be drawn from the 'earnings of the Missouri penitentiary fund' and deposited in the state treasury to the credit of the fund herein created, known and designated as the 'convicts' relief fund,' which said fund shall be under the management of said commission, and from which they shall be authorized from time to time to draw such moneys for the relief of the dependents of any convict as the commission in its judgment may deem meet and proper."

The foregoing section requires that at the end of each fiscal year the Department of Corrections shall audit its records and determine whether a profit has been made from all the operations under its control. To determine that profit there would be deducted from the gross receipts of all sales of manufactured articles, the cost of the raw materials which entered into said articles and the cost of the actual running and operating expenses of the prison. This statute contemplates that the Department of Corrections consider all the prison

activities as a whole, rather than considering the penitentiary as one project and the industries as another.

We see no need for requisitions and warrants being used for each transaction. The Department of Corrections is in charge of all the transactions and a system of debits and credits should be sufficient to enable the department to credit proper funds with receipts as required by Sections 9098 and to determine the net profit of all business operations as required by Section 9099.

Conclusion

It is, therefore, the opinion of this office that a system of debits and credits may be used by the Department of Corrections to effect transactions between the various industries operated in connection with the penitentiary and between the penitentiary and said industries and that it is not necessary that each transaction be evidenced by requisitions and the issuance of warrants in payment of requisitioned articles.

Yours very truly,

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APPROVED:

J. E. Taylor
Attorney General

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