

CANCER COMMISSION: Scientific research and printing supplies.

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Doctor Fred J. Taussig  
Vice-Chairman  
State Cancer Commission  
3713 Washington Avenue  
St. Louis, Missouri

Dear Sir:

We have your request of July 2nd for an opinion presenting two questions:

(1) The right of the Commission to pay a salary of One hundred and fifty dollars a month and expenses for a period of four months for a scientific statistical research on the factors contributing to cancer mortality in the State of Missouri;

(2) Whether the State Cancer Commission comes under the State Printing Contract.

I.

The power of the Commission  
to conduct scientific statistical  
research.

The Act creating the State Cancer Commission, Section 7, Laws of Missouri 1937, p. 496, provides in part as follows:

"The State Cancer Hospital shall be primarily and principally designed for the care and treatment of indigent persons afflicted with cancer, such scientific research as will promote the welfare of indigent patients committed to its care  
\* \* \* \*".

It is apparent from the Act itself that the Legislature intended to authorize the Cancer Commission to employ scientifically trained individuals and fix their compensation (Section 5), and to conduct scientific research with reference to diseases of a cancerous nature.

It is therefore the opinion of this office that the Commission has authority to make the appropriation to pay the salary and expenses of a person to do scientific statistical research on the factors contributing to cancer mortality in the State of Missouri.

II.

State Printing Contract

We find no reference in the Act creating the State Cancer Commission to the printing or furnishing of printing supplies to the Commission.

Section 13783 R.S. Missouri 1929, relating to the classification of state printing, provides in part as follows:

"The printing of all blanks, circulars and other work necessary for the use of the executive departments, \* \* \* \* shall constitute the third class,\* \* \*"

In the case of State vs. Wilder, 199 Mo. 470, 97 S.W. 940, the Supreme Court In Banc held that the Insurance Department was a separate and distinct department of State Government and that the disbursement of its funds appropriated to pay its expenses, including its expenses for printing, were under the exclusive control of the Superintendent of Insurance. In that

case it was pointed out that the Insurance Department was authorized to disburse funds for printing forms for use of the Department only upon the requisition and approval of the Superintendent of Insurance (l. c. 486).

Thereafter the Legislature amended the law, particularly Section 13799, wherein they defined "Executive Departments" to mean "both the heads of said departments and the subordinate branches thereof, the boards, commissions, bureaus and officers appointed by the heads of said departments, except the Board of Education and eleemosynary institutions of the State".

Thereafter, in State vs. Hackmann, 282 S.W. 1007, the Supreme Court in determining the effect of this statutory amendment on the opinion of State vs. Wilder, supra, l. c. 1010, said:

"There is nothing in the rulings in the case of State vs. Wilder, 97 S.W. 940, 199 Mo. 470, which, when intelligently analyzed, will support the contention of relator. That case had to do with the allowance of an account for printing furnished to the insurance department. Under the law then in force, as we have stated, there was only a general reference to the executive departments of the state, and, without consideration as to what constituted such departments, it was held to be a separate and distinct department of the state government, and was not subject to the provisions of the statute then regulating public printing. With the correctness of that ruling we need not concern ourselves, as it was rendered under different statutes from those we are now considering. Subsequent to the rendition of this opinion, the Legislature repealed the section of the statute (section 10356, R.S. 1909) in force at the time of the

rendition of the Wilder opinion, and enacted section 9714, which, as we have shown, in addition to a general declaration as to the executive departments, specifically defined the same, and all of their subordinate branches. Had this statute been in existence when the Wilder Case was determined, and the laws regulating the insurance department had been the same as those now applicable to the highway commission, it is but a reasonable conclusion that the opinion in the Wilder Case would have been different. Presumptions aside, however, the conclusion as to its not constituting a precedent in the instant case is authorized by the difference, not only in the statutes concerning the insurance and highway departments, but in those in regard to public printing then and now."

In this case the Cancer Commission of the State of Missouri is created by legislative enactment and constitutes four members appointed by the Governor with the advice and consent of the Senate. Its origin therefore springs from legislative enactment. As to whether or not such a commission so created is a part of the executive branch of the State Government, Walker, J. in *State vs. Hackmann*, supra, speaking for the Court said, l. c. 1010:

"Let us consider, therefore, in what manner the state highway commission should be classified. It was created by a legislative enactment in 1921 (Laws 1921, 1st Ex. Sess. p. 132). It consists of four members appointed by the Governor. Its duties, generally stated, are the construction, improvement, and maintenance of highways; and to that end auxiliary power is conferred necessary to the performance of the main purpose of the creation of the commission (section 14, Laws 1921, 1st. Ex. Sess. p. 137).

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Created by legislative enactment, and clothed with powers therein defined, through the appointment of the Governor, under all recognized rules of construction it is, when properly classified, a subordinate branch of the executive department."

It is therefore the opinion of this office that the Cancer Commission should obtain its printing supplies under the State Printing Contract.

Respectfully submitted,

FRANKLIN E. REAGAN,  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney General

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