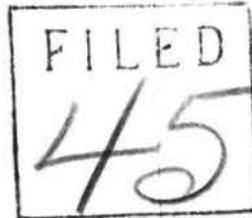


PENSIONS, BLIND: The Commission may accept bequests,
and how same may be expended.

May 29, 1940



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

Dear Mr. Jameson:

This will acknowledge receipt of your request for an official opinion under date of May 14, 1940, and supplemental letter of May 24, 1940, which read as follows:

"I wish you would please note the enclosed correspondence and, if possible, let me have an opinion from your department at an early date, as it will likely save the tax on a \$5000. bequest made by Mrs. Sarah L. G. Wilson, St. Louis, to the Missouri Commission for the Blind.

"You will note a letter from H. B. Green, who is president of the Industrial Aid for the Blind, Inc. in St. Louis, claiming this bequest was a technical error in the will and that they feel satisfied that Mrs. Wilson had in mind bequeathing this money to the Industrial Aid for the Blind.

"As chairman of the Missouri Commission for the Blind, I do not feel I can answer this letter until I have an opinion from your office."

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"Supplementing my letter of May 14, 1940 relative to the bequest of \$5,000.00 to the Missouri Commission for the Blind, I shall appreciate if you will advise whether this bequest can be received by the Commission; whether the Commission can hold same, or if it has to be placed in the State Treasury.

Also if you will favor us with your opinion as to whether the Commission, if permitted to accept and hold this bequest, can use same in the performance of its duty of investigating applications for blind pensions and for such purpose as the expense of employment of case workers, travel expense of workers, office workers of the Pension Department and other expense, such as postage and stationery and so forth, all incidental to the investigation of applications for pension a duty imposed on the Commission by Section #8898 R. S. Mo. 1929."

In regard to your former inquiry, relative to whether the Commission for the Blind shall receive the bequest or the Industrial Aid for the Blind, Inc., as a guide in determining who is entitled to this bequest, we must look to the will itself. The provision specifically bequeaths \$5,000.00 to the Missouri Commission for the Blind. We fail to find any ambiguity in this part of the will. Apparently it was the intention of the testator that the Commission for the Blind shall receive the \$5,000.00 bequest.

C. J. Vol. 69, p. 52, Section 1118, lays down the general principle of law in construing wills and the courts of this state follow it. This reads in part as follows:

"If a will sets forth the intention of the testator in clear and unequivocal language there is no occasion for judicial interpretation; * * * * *."

Also, in Vol 69 of C. J. at page 42, Section 1110, we find:

"While the appropriate court has power to interpret and construe a will, its function is judicial and administrative, not legislative or creative. Stated otherwise, the court's function is to construe a will, not to make or rewrite one for the testator under the guise of construction, even to do equity or accomplish a more equitable division of the estate, or for the purpose of making it more liberal and just, or even though interested parties are agreeable thereto. Nor can the will be changed either by the court, through construction, or by the parties before the court, by admission or agreement or stipulation, although parties who are sui juris may make an agreement with each other with regard to their respective interests under the will. The court cannot pass on the wisdom of provisions of a will. Where there is any uncertainty or ambiguity in a will it is proper for the court to resort to or take into consideration the established rules for the construction of wills. On the other hand, since the purpose of construing and interpreting a will is to ascertain the intention of the testator as expressed in the will, where such intention is expressed in the will in clear and unequivocal language, there

is no need for judicial construction and interpretation, and it should not be resorted to or permitted.* * * * *

Therefore, without going into the matter further it unquestionably was the intention of the testator in this particular instance that said bequest for \$5,000.00 was for the Commission for the Blind.

You further inquire can the Commission for the Blind receive this bequest. We answer this in the affirmative.

Section 8890 R. S. Mo. 1929, reads as follows:

"Said commission is authorized to receive and use for the purposes hereinbefore enumerated, or any of them, donations and bequests, and is authorized to expend such donations and bequests in such manner as it may deem proper within the limitations imposed by the donors thereof."

The above provision has not been repealed.

You also inquire if the Commission can hold same or does the Commission have to place same in the state Treasury. In this state we have a constitutional provision which provides that all revenue collected and moneys received by the state shall go into the Treasury.

Section 43 of Article IV of the Constitution of Missouri reads as follows:

"All revenue collected and moneys received by the State from any source whatsoever shall go into the treasury, and the General Assembly shall have no power to divert the same, or to permit money to be drawn from the treasury, except in pursuance of regular appropriations made by law. All appropriations of money by the successive General Assemblies shall be made in the following order:

"First, For the payment of all interest upon the bonded debt of the State that may become due during the term for which each General Assembly is elected.

"Second, For the benefit of the sinking fund, which shall not be less annually than two hundred and fifty thousand dollars.

Third, For free public school purposes.

"Fourth, for the payment of the cost of assessing and collecting the revenue.

"Fifth, For the payment of the civil list.

"Sixth, For the support of the eleemosynary institutions of the State.

"Seventh, For the pay of the General Assembly, and such other purposes not herein prohibited as it may deem necessary; but no General Assembly shall have power to make any appropriation of money for any purpose whatsoever, until the respective sums

necessary for the purposes in this section specified have been set apart and appropriated, or to give priority in its action to a succeeding over a preceding item as above enumerated."

However, our courts have construed revenue as used in the constitutional provision to mean money received from taxation, or current incomes which is subject to appropriation by the Legislature.

In *State v. Board of Regents*, 264 S. W. 698, 1. c. 698-699, the court defined revenue collected and money received by the State from any source whatsoever as follows:

"This provision, it will be seen from its terms, which are wisely chosen as a limitation upon power, is restricted to 'revenue collected and money received by the state from any source whatsoever.' By revenue, whether its meaning be measured by the general or the legal lexicographer, is meant the current income of the state from whatsoever source derived which is subject to appropriation for public uses."

In the same case the court held that the Board of Regents for Northeast Missouri State Teachers College was not the state and that money received by it other than appropriation was not state money. In this case the Board had insured the buildings against a fire with money derived from the Board charging certain student fees. There was no statutory provision for assessing such a fee.

One of the buildings caught fire and burned. The insurance paid the Board of Regents, who were the beneficiaries, and the Board immediately set about restoring the building with the insurance money, where

mandamus proceedings were instituted to compel the payment of the insurance money into the State Treasury. As previously stated, the court held the Board was authorized to rebuild with the insurance money without placing same in the State Treasury and receiving an appropriation for such expenditures.

In view of the above and foregoing, it is the opinion of this Department that such a bequest shall not be placed in the Treasury of the State.

The Fifty-seventh General Assembly passed the following provision on page 415, Laws of 1933:

"All fees, funds and moneys from whatsoever source received by any department, board, bureau, commission, institution, official or agency of the state government by virtue of any law or rule or regulation made in accordance with any law, shall, by the official authorized to receive same, and at stated intervals, be placed in the state treasury to the credit of the particular purpose or fund for which collected, and shall be subject to appropriation by the General Assembly for the particular purpose or fund for which collected during the biennium in which collected and appropriated. The unexpended balance remaining in all such funds (except such unexpended balance as may remain in any fund authorized, collected and expended by virtue of the provisions of the Constitution of this State), shall at the end of the biennium and after all warrants on same have been discharged and the appropriation thereof has lapsed, be transferred and placed to the credit of the ordinary revenue fund of the state by

the state treasurer. Any official or other person who shall willfully fail to comply with any of the provisions of this section, and any person who shall willfully violate any provision hereof, shall be deemed guilty of a misdemeanor; provided, that in the case of state educational institutions there is excepted herefrom, gifts or trust funds from whatever source; appropriations, gifts or grants from the Federal Government, private organizations and individuals; funds for or from student activities, farm or housing activities, and other funds from which the whole or some part thereof may be liable to be repaid to the person contributing the same, and hospital fees; all of which excepted funds shall be reported in detail quarterly to the Governor and biennially to the General Assembly."

The above provision specifically makes an exception of gifts, and does not require that gifts be placed in the State Treasury. However, this provision does require that said gifts shall be reported in detail quarterly to the Governor and biennially to the General Assembly.

You inquire if this bequest may be used to employ case workers to investigate applications now pending for blind pensions, traveling expenses, etc., incidental to the investigation of applications.

Section 8890, supra, authorizes the Commission to receive such a bequest and use same for the purposes hereinabove enumerated and is further authorized to expend such donations and bequests in such manner as it may deem proper within the limitations imposed by the donor.

Section 8889 R. S. Mo. 1929 in part reads as follows:

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"The duties of said Commission shall be to prepare and maintain a complete register of the blind persons within this state and to collate information concerning their physical condition, cause of blindness and such additional information as may be useful to the Commission in the performance of its other duties as herein enumerated, * * * * *"

In view of Section 8890 and 8889, supra, it is the opinion of this department that such a bequest may be used for the employment of workers to investigate applications for blind pensions now filed with the Commission for the blind.

CONCLUSION

It is, therefore, the opinion of this Department that the Commission for the Blind, whose duties have now been transferred to the members of the State Eleemosynary Institutions under Section 8888 R. S. Mo. 1929, as amended by the Fifty-seventh General Assembly, p. 190, Laws of 1933, is authorized to receive this bequest for Five Thousand (\$5,000.00) Dollars, and that same shall be reported to the Governor and the General Assembly but said bequest does not have to be placed in the State Treasury.

Furthermore, this bequest may, in the absence of any special request by the donar as to how same shall be used, be used to employ case workers to investigate applications for blind pensions now filed with the Commission.

Yours very truly,

APPROVED:

AUBREY R. HAMMETT, JR.
Assistant Attorney General

COVELL R. HEWITT
(Acting) Attorney General
ARH/rv