

STATE PARK BOARD: Legality of paying salaries of technical personnel
APPROPRIATIONS: out of accounts other than personal services.

November 1, 1941

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Mr. I.T. Bode
Director
State Park Board
Jefferson City, Missouri



Dear Mr. Bode:

This will acknowledge receipt of your letter of October 22, 1941, requesting an official opinion, which reads as follows:

"Reference is made to the instruction of the State Park Board at the meeting on October 20th that 'an opinion be rendered as to the legality of paying the salaries of technical personnel out of accounts other than personal services'.

"Reference is made to the 1941 Missouri Laws, page 196, Section 35; also page 222, Section 84. The inquiry is - can salaries or payment for personal services be paid from the following appropriations:

"B - Additions	\$35,000.00
C - Repairs and Replacements	\$10,000.00
D - Operations	\$25,000.00

"\$75,000 to be set aside for the purpose of matching federal WPA funds used in State parks."

"\$25,000 to be set aside for the

use of securing other federal aid services.'

"We are clear on the matter of the payment of salaries out of the Personal Service Appropriation of \$75,000 and clear on the matter of paying for any necessary extra or emergency labor from this same appropriation. In this request we are asking for an opinion on the matter of the payment of salaries, with particular reference to technical personnel, from any or all of the five appropriations which were made for the State Park Board, in addition to the Personal Service Appropriation."

The general rule in construing appropriation acts is that they shall be strictly construed.

59 C. J., Section 401, page 262 - 263, reads in part as follows:

"An appropriation law is to be construed under and by the same rules as other legislation. Where the intention of the legislature is plain and obvious, there is no room for judicial construction of an appropriation. They are to be construed without liberality towards those who claim their benefits; but are not to be construed so strictly as to defeat their manifest objects. The language is to be presumed to have been used in its natural and ordinary meaning, and not to be given a forced and unnatural construction.
* * * * *

Otherwise, an appropriation law shall be construed under the same rules as other legislation. The language is presumed to have been used in its natural and ordinary meaning and not to be given a forced and unnatural construction. (State v. Seibert, 12 S. W. 348.)

This appropriation act, Section 35, Laws 1941, pages 196-197, includes four subsections namely, A. Personal Service, B. Additions, C. Repairs and Replacements, and D. Operation. Since you state that no construction is necessary on the first of these provisions namely, A. Personal Service, we shall commence with:

B. Additions. This provision reads as follows:

"Including labor, supervision, expenses, material and supplies for the erection of buildings, fencing and other land improvement, installation of light plants and water supply and for operative equipment, including educational and recreational equipment, household, kitchen and dining room equipment, production and construction equipment and transportation and conveying equipment.....35,000.00"

One of the cardinal rules of construction is that a statute should be construed so as to ascertain and give effect to the legislative intent expressed therein. (State ex rel. Wabash Ry. Co. et al v. Shain et al., 106 S. W. (2d), 898-901.)

Obviously, it was the intention of the legislature in passing this appropriation act that all personal services included under A. Personal Service, was for the purpose of general, all around maintenance in the state parks, which does not necessarily include personal services for new work or additions. "Addition" is usually defined as something added or annexed. Funk & Wagnalls, New Standard Dictionary defines it as "2. Anything added; an annex, accession; as, an addition to a house, or to land laid out in lots, as in a village." As used in this appropriation act for state parks, it apparently was intended to mean any new construction as specifically mentioned in this provision.

Under "Additions" we find words including "labor" and "supervision". Judicial interpretations of "labor" have included architects or other skilled men superintending work. The case of Wandling v. Broadus, 10 S. W. (2d) 651, 1. c. 655, holds that "supervision" is "labor".

"Defendant contends the court was in error in admitting in evidence the testimony of witnesses to the effect that plaintiff supervised and managed certain improvements made at the home of Mrs. Gallop. This supervision was work and labor, and was clearly admissible in evidence on that issue."

Likewise, in the case of Gaastra, Gladding & Johnson v. Bishop's Lodge Co., 299 Pac., 347, 1. c. 349, the court said:

"Many, or at least some, of the jurisdictions which deny to an architect a lien for his services do so upon the conception, as above stated, that his services are not 'labor' within the meaning of the statute. We regard this view as obsolete and inconsistent with that liberal construction of our mechanic's lien statutes to which this court is committed. Lyons v. Howard, 16 N.M. 327, 117 P. 842.

"The appellants say the lien is given only to a person who labors, and the architect and contractor did not labor. If they did not labor, what word will characterized the service they furnished? When the architect idealized the structure and put it upon paper, what was his effort if not labor? When the Master sent out "other seventy" to do his work, he called them laborers.' Williamson v. Hotel Melrose, 110 S. C. 1, 34, 96 S. E. 407, 415."

See also Cain v. Rea, 166 S. E. 478, l. c. 480; United States v. Shea-Adamson Co., 21 F. Supp. 831-838.

In view of the above definitions of "addition" and "labor", and taking into consideration the use of such words in this appropriation act it was evidently the intention of the legislature that architects, engineers, supervisors and all such other labor which may be used in constructing additional buildings, fencing, other land improvements, etc., may be paid out of this appropriation.

The next provision under this appropriation act to be construed is subsection C.

C. Repairs and Replacements:

"Including buildings, fencing, roads, and other structures, building equipment, including light plant, water supply and plumbing and other operative equipment, educational and recreational equipment, household, kitchen and dining room equipment, production and construction equipment (non-industrial), transportation and conveying equipment and structures, and other repairs and replacements necessary to maintain and operate the state parks.
.....\$10,000.00"

It is doubtful if any personal services could be paid out of this section if the last few words were not included therein namely, "and other repairs and replacements necessary to maintain and operate the state parks." It is common knowledge that labor is a necessary prerequisite in making any repairs. In fact, as a general rule by far the largest part of the cost of any repair job consists of labor.

In Barber-Asphalt Co., v. Hezel, 56 S. W. 449, the court in defining "repair" said:

"To repair" means to restore to a sound or good state after decay, injury, dilapidation or partial destruction. * * * * *

Therefore, since personal service is an integral part of any repair job, all necessary services required in making such repairs in the state parks as specified in this section may be paid out of this appropriation.

The last provision or section under consideration is that of:

D. Operation:

"Including general expenses including communication, regulative transportation of things, travel in and out of the State, travel and other general expenses; also material and supplies, consisting of clothing and dry goods, farm and garden supplies, grounds and roadways material and supplies, household supplies, laundry, cleaning and sanitation supplies and repairs and special material and supplies, and for bonds for accountable officers.....\$25,000.00"

Apparently, this appropriation was not intended to include any personal services or labor. The words "and repairs" are included therein; however, the writer is of the opinion that under Section C. of this appropriation act the legislature has provided for repair of operative equipment and certainly the general assembly did not intend to make a second appropriation for the same thing or service. Therefore, no services or labor of any kind should be paid out of this appropriation.

Your next inquiry is directed to the appropriation passed by the Sixty-first General Assembly and found in Section 84, Laws 1941, page 222, which reads in part as follows:

"\$75,000.00 to be set aside for the purpose of matching federal WPA funds used in state parks.

"\$25,000.00 to be set aside for the use of securing other federal aid services, and the purchase of additional or adjoining lands for state parks for the years 1941-1942, and that no deduction as provided in Section 73, House Bill 581, shall apply to this appropriation."

Funk & Wagnalls, New Standard Dictionary defines "match" as "1. One similar, or equal in appearance, position, quality, or character; a suitable or fit associate, a possible mate. 2. A person or thing that is the equal of another in ability, strength, character, position, etc., one able to cope with or oppose another; a peer; as he met his match."

Unquestionably, the above appropriation of \$75,000.00, to match federal WPA funds used in state parks, was granted in order to secure WPA work in state parks. It is now and has been the policy of the Works Progress Administration to require the state, as sponsor on all projects in state parks, to furnish at least twenty-five per cent of the total amount of the cost. In fact, an annual contract is entered into, and one was in existence at the time this appropriation was passed and approved. In such agreement, or contract, the state sponsor's share of the cost of said project is specifically set out. That is, the sponsor shall furnish a certain amount of material, technical services, etc.

Ordinarily, words are to be used in their ordinary and everyday use in construing appropriation acts as it is in construing any other legislative act. However, if this were true in this instance such fund could be used only to actually match the same amount of money used by the federal government on WPA projects within state parks. That is, the state sponsor should spend dollar for dollar that is furnished by the Works Progress Administration.

We are of the opinion that since it was commonly known at the time this appropriation was passed that the state is not

required actually to match the WPA fund used for construction work in state parks and, furthermore, that the Works Progress Administration does not require the state to match dollar for dollar for work on WPA projects in the state parks, that it was the intention of the legislature that this fund of \$75,000. should be used as the sponsor's share on such projects, in such proportions as is required by the Works Progress Administration of the state sponsor.

Therefore, we are of the opinion that technical services of engineers, architects and supervisors or labor of any kind which may be required of the state sponsor, as a part of sponsor's agreement or contract on WPA projects in state parks, may be paid out of this appropriation.

As to the \$25,000.00 appropriation for use of securing other federal aid services this Department recently rendered an opinion which is applicable in the instant case. It was held that technical service could be paid out of such appropriation if it was a necessary prerequisite to securing such services of these federal agencies. It has been the usual procedure in the past with such agencies that the state be required to furnish plans, engineering and supervisory services. Therefore, we are of the opinion that the above services may be paid out of this appropriation.

CONCLUSION

(1) Therefore, it is the opinion of this Department that services of such employees as architects, engineers, supervisors and those performing manual labor, as are necessary to fulfill the requirements of Subsection B. Additions, under Section 35, Laws 1941, page 196, may be paid out of that appropriation. However, this appropriation shall in no way be used for personal services or labor used in repairing buildings, fences and equipment already constructed or erected, but must be used for additions thereto.

(2) That under Subsection C. Repairs and Replacements, such services or labor as is necessary to repair those things under this section and no other, may be paid therefrom.

(3) That no personal service or labor may be paid from the appropriation under Subsection D. Operation, under Section 35, supra.

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4. That such technical services, labor, etc., as is required of the state sponsor on WPA projects in state parks may be paid out of the \$75,000.00, appropriation under Section 84, Laws 1941, page 222.

5. That the same kind of services may be paid out of the \$25,000.00, appropriation in Section 84, supra, as may be required to secure other federal agencies and services as was previously ruled by this Department.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

VANE C. THURLO
(Acting) Attorney General

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