

STATE BUILDING COMMISSION: May appropriate money from funds on hand to investigate physical defects in buildings and to estimate cost of repairs, but cannot expend funds to determine personal responsibility for defects.

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June 19, 1942

Honorable Forrest C. Donnell  
Governor of Missouri  
State Capitol Building  
Jefferson City, Missouri



Dear Governor Donnell:

We are in receipt of your oral communication to this department wherein you request an opinion upon the following question:

"Would expenditure by The State Building Commission of said sum of \$5,000.00, or so much thereof as may be necessary, of the funds now at the disposal of the said The State Building Commission, for the purpose set forth in the first of the resolutions adopted, as aforesaid, at said meeting held on June 17, 1942, be legal? The purpose referred to is: 'for the purpose of obtaining the following information: (1) the cause of the conditions now existing in the said cottages; (2) upon whom the responsibility for said conditions rests; (3) the ascertainment of what is necessary to be done in order to correct the defects, together with the estimated cost thereof;'"

The above question entails the examination and interpretation of the meaning of Section 44d, Article IV of the Constitution of Missouri, which section reads as follows:

"In addition to the exceptions made in Sections 44, 44a, 44b and 44c, the General Assembly shall have power to contract or to authorize the contracting of a debt or liability on behalf of the State and to issue bonds or other evidences of indebtedness therefor, not exceeding in the aggregate Ten Million

Dollars (\$10,000,000.00), for the purpose of repairing, remodeling or rebuilding, or of repairing, remodeling and rebuilding State buildings and properties at all or any of the eleemosynary or penal institutions of this State, for building additions thereto and additional buildings where necessary, such bonds to bear interest at a rate not exceeding five per centum (5%) per annum, payable semi-annually, and maturing not later than thirty-five (35) years from their date. Said bonds shall be issued by the State Board of Fund Commissioners in such amounts, from time to time, as may be necessary to carry on the building program herein provided for. The proceeds of the sale or sales of any bonds issued hereunder, **together** with any funds granted by or otherwise received from any agency of the Federal Government in aid of the purposes herein specified, shall be paid into the state treasury and be credited to a fund to be designated the 'State Building Fund,' and shall thereupon stand appropriated without legislative action for said purposes and for the payment of all expenses, incidental thereto. The proceeds of the sale of the Ten Million Dollars (\$10,000,000) of bonds herein authorized shall be expended for the purpose of repairing, remodeling or rebuilding any of the public buildings of the State of Missouri devoted to eleemosynary and penal purposes, and for building additions thereto, and additional buildings where necessary. The said bonds and the interest thereon shall be paid out of the State Building Bond Interest and Sinking Fund, which is hereby created and which funds is to be provided by the levy and collection of a direct annual tax upon all taxable property within the State and from the levy and collection of any special tax or taxes which may be authorized by the General Assembly and by it directed to be applied to the payment of interest and maturing principal of said bonds. If at any time after the issuance of any of the said bonds it shall become apparent to the State Auditor that there

will not be sufficient monies in said State Building Bond Interest and Sinking Fund for the payment of the principal and interest maturing and accruing on said bonds during the next succeeding calendar year, it shall be the duty of the State Auditor, annually, on or before the first day of July, to determine the rate of taxation necessary to be levied upon all taxable property within the State to raise the amount of money needed for that year to pay the principal and interest of said bonds maturing and accruing in the next succeeding year, taking into consideration available funds, delinquencies and costs of collection. And the Auditor shall annually certify the rate of taxation so determined, to the clerk of the county court of each county, and to the assessor or other officer in the City of St. Louis, whose duty it shall be to make up and certify the tax books wherein are extended the ad valorem state taxes. It shall be the duty of said clerks and the said assessor or other proper officer in the City of St. Louis to extend upon the tax books the taxes to be collected, and to certify the same to the collectors of the revenue of their respective counties and of the City of St. Louis, who shall collect such taxes at the same time and in the same manner and by the same means as are now or may hereafter be provided by law for the collection of state and county taxes, and pay the same into the state treasury. All funds paid into the State Building Bond Interest and Sinking Fund shall be and stand appropriated without legislative action to the payment of principal and interest of the said bonds, there to remain until paid out in discharge of the principal of said bonds and the interest accruing thereon, and no part of said fund shall be used for any other purpose so long as any of the principal of said bonds and the interest thereon shall

be unpaid. If at any time the balance in said State Building Bond Interest and Sinking Fund should be insufficient to pay accruing interest or maturing principal of said bonds, the Board of Fund Commissioners shall direct the State Auditor and the State Treasurer to transfer on their books from the State Revenue Fund to said State Building Bond Interest and Sinking Fund the sum required for said purposes, or either of them, and such sum so transferred shall be reimbursed to the State Revenue Fund whenever there may be a balance in the said State Building Bond Interest and Sinking Fund in excess of the amount which may then be needed to meet the accruing interest and maturing principal of the said bonds during one year next succeeding. Those institutions of the State of Missouri to which any of the proceeds of the sale of said bonds may be devoted are those eleemosynary and penal institutions whose buildings are in need of repair or remodeling or in need of being rebuilt or in need of additions or additional buildings. The General Assembly shall enact such laws as may be necessary to carry this amendment into effect."

From a reading of the amendment, supra, it may be pointed out that the wording of the amendment is unambiguous and has a clear and definite meaning, in that it provides in part that a fund of money, not exceeding in the aggregate ten million dollars, is to be used "for the purpose of repairing, remodeling or rebuilding, or of repairing, remodeling and rebuilding State buildings and properties at all or any of the eleemosynary or penal institutions of this State, for building additions thereto and additional buildings where necessary." Further, the section provides in part that the "proceeds of the sale of the Ten Million Dollars (\$10,000,000) of bonds herein authorized shall be expended for the purpose of repairing, remodeling or rebuilding any of the public buildings of the State of Missouri devoted to eleemosynary and penal purposes, and for building additions thereto, and additional buildings where necessary."

The above two excerpts taken from Section 44d of Article IV of the Constitution of Missouri, are the only directions given to the Building Commission explaining and defining the purposes for which the proceeds of the bonds provided for are to be expended, and, from the reading of the excerpts set forth, supra, we find that the amendment contemplates buildings that are in existence and new buildings. We wish to point out that the Building Commission shall have the authority to repair, remodel and rebuild buildings that are in existence, and also may build additions to such buildings. Further, if the Commission finds that it is necessary, they may build additional new buildings.

Now turning to the questions propounded, we think it advisable to study and define the meaning and scope of the words set forth in the excerpts of Section 44d, supra, in order that we may arrive at the clear intent, meaning and purpose of said amendment. First, we shall study the definition and scope of the word "repairing." In the case of *Fuche v. City of Cedar Rapids*, 139 N. W. 903, 1. c. 904, 158 A. L. R. 490, the court said:

"To 'repair' presupposes the existence of the thing to be repaired; thus we say the thing needs repairing; the thing is out of repair, and so, when we speak of repairs, we assume that the thing to be repaired is in existence, and the word 'repair' contemplates an existing structure or thing which has become imperfect by reason of the action of the elements, or otherwise; and, when we repair, we restore to a sound or good state, after decay, waste, injury, or partial destruction, the existing structure or thing which needs to be restored to its original condition, or, in other words, we supply, in the original existing structure, that which is lost or destroyed, and thereby restore it to the condition in which it originally existed, as near as may be."

See cases cited in 54 C. J., p. 395, par. 4, note 68.

Now turning to the next terms used in the amend-

ment, namely, "remodeling or repairing," it will be noted from a reading of Section 44d, supra, that these words, as used in this section are synonymous because they are coupled with the word "or," and because of the punctuation, as noted, supra. Therefore, in defining these terms, we call attention to the case of *Beauchamp v. Consolidated School District*, 297 Mo. 64, l. c. 71, wherein the court said:

"\* \* \* The remodeling of a building is more than repairing it or making minor changes therein. The ordinary significance of the term imports a change in the remodeled building practically equivalent to a new one. \* \* \* \* \*"

Also, in the case of *Nixon v. Gammon*, 191 Ky. 175, 229 S. W. 75, l. c. 77, the court said:

"\* \* \* The word 'repair' does not include the word 'rebuild,' and the courts have never so held.

"If a house be destroyed by fire, to restore it would not be to 'repair' it, but to 'rebuild' it, and this is true even if the walls or some part thereof be standing in substantially the same condition in which they were before the fire. \* \* \*"

Further, as heretofore pointed out, Section 44d, supra, provides for the building of additions to buildings that are already in existence and for additional buildings where necessary. The building of additions contemplates the building of a new structure to be attached to an already existing building, for it was said in the case of *Mack v. Eysell*, 59 S. W. (2d) 1049, l. c. 1051, as follows:

"The word 'addition' implies physical contact; something added to another. 1 C. J. 1190.' *Meyering v. Miller* (Mo. Sup.) 51 S. W. (2d) 65, 66. The ordinary meaning of the term 'addition to a building' is some structure physically attached to or connected with the building itself. Webster's New International Dictionary defines the word 'addition' when used in reference to a

building as: 'A part added to a building, either by being built so as to form one architectural whole with it, or by being joined with it in some way, as by a passage, and used so that one is a necessary adjunct or appurtenance of the other, or so that both constitute in use and purpose one and the same building.' \* \* \* \* \*

The words "additional buildings" of course contemplate the building of a complete new structure.

Now turning to a supplemental question as to the right of the Board to employ architects to ascertain costs and prepare blueprints, specifications, estimates, etc., preparatory to carrying out the powers and directions given to the Board, through the wording, supra, we wish to call attention to a cardinal rule of statutory construction which is equally applicable in construing constitutional amendments giving a statutory grant of power or right which carries with it, by implication, everything necessary to carry out the power or right and make it effectual and complete. However, powers specifically conferred cannot be extended by implication. Huggins v. Mooresville Consolidated School District, 278 S. W. 769, l. c. 771; 59 C. J., par. 575, p. 972, 973, and cases cited thereunder.

In the early case of Peterson v. Mayor, etc., of New York, 17 N. Y. Rep. 449, l. c. 453, which case involved a suit to recover for services of plaintiff in preparing certain plans and specifications and work drawings for the erection of a new edifice in the market place of that city, the court said:

"\* \* \* It was incident to the general power to build a market, to determine upon the form, dimensions and fashion of the edifice; and I suppose no public body or private person would enter upon an important and expansive work of this character without having plans, drawings, specifications and estimates laid before them. I cannot doubt, therefore, but that it was entirely within the province of the council to employ a person of professional skill to perform the services for which the plaintiff claims compensation, unless restrained

by some positive provision of law. \* \*"

It will be observed, however, that in the above case a more skilled person was employed to draw plans and make specifications for work that is contemplated to be done, and we find no case where a court has interpreted a constitutional provision in the nature of Section 44d, or any statute of similar purpose and intent, which gives the Board the right, by implication, to employ persons to go back and make extensive investigation with the endeavor to lay the blame on certain individuals or corporations for some violation of contract or act of corruption which may, or may not, have existed at the time such structures were built, repaired or remodeled. In answer to the question here presented, therefore, it is our view that Section 44d does not contemplate, directly, indirectly or by implication, the granting of any such powers to the Building Commission. We are further of the view that if the Board should attempt to expend money for any such purpose, they would be clearly doing so without any authority or right. In this connection, we call attention to the case of State v. Smith, 81 S. W. (2d) 613, where this identical amendment was up for review by the court, and wherein payment was sought for items classified as follows:

"\* \* \* \* (1) Furniture and fittings; (2) food service; (3) laundry; (4) clinical; and (5) industrial. The following units are typical of the several classifications mentioned, and will serve the purposes of this opinion without enumerating them all at length: (1) Tubular steel chairs, bedside tables, wheel chairs, hospital chart files; (2) knives, forks, and spoons; (3) electric irons, canvas baskets; (4) colonic irrigation outfit; (5) forge, hand drill."

"\* \* \* \* It is elementary that the statute could not authorize an expenditure out of the proceeds of the bond issue not sanctioned by the constitutional amendment itself. In other words, the purposes for which the statute directs expenditures can be no broader than the restrictions placed thereon by the constitutional amendment.  
\* \* \* \* \*"

"\* \* \* 'But can it be said to be doubtful

as to whether equipment of the character hereinbefore described comes within the purposes of a bond issue to 'repair, remodel or rebuild public buildings devoted to eleemosynary and penal purposes, and for building additions thereto, and additional buildings where necessary?'

\*\*\*\*\*"

CONCLUSION

It is the opinion of this department that the committee appointed, as was provided for in the resolution dated June 17, 1942, shall have the right to obtain information as to the cause of the physical conditions now existing in said cottages. If, in ascertaining the facts that have caused the conditions now existing in said cottages, it is revealed that the conditions are the result of faulty material, bad workmanship, or poor construction, it may follow that the responsibility for said condition may be determined, and the Commission would have the power to pay for such information. It would be the duty of the persons making the investigation in consideration for said payment to state its findings. However, the Commission is not vested with any authority or power, under said resolution, to expend monies from said building fund to secure evidence not necessarily connected with determining the condition of the cottages.

The Commission shall have the right to ascertain what is necessary to be done in order to correct the defects, if any, that exist in the cottages, and, also, may perfect plans and estimates preparatory to remedying such defects, if any.

Respectfully submitted,

B. RICHARDS CREECH  
Assistant Attorney General

APPROVED:

GAYLORD WILKINS

ROY MCKITTRICK  
Attorney General

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