

PENITENTIARY Revolving fund may be used to purchase livestock for the farm industries of the Department of Penal Institutions.

REVOLVING FUND:

September 17, 1942

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Mr. Paul V. Renz
Farms Commissioner
Department of Penal Institutions
Jefferson City, Missouri

Dear Mr. Renz:

This is in reply to yours of recent date wherein you submit a question on the following statement of facts:

"Because of conditions beyond our control, the Penal Board deems it necessary, if possible, to buy a quantity of live stock both Cattle and Hogs for consumption in 1943.

"The balance remaining in our 1942 budget will not permit our buying this stock at this time, and the only way that we can buy stock would be for the Industries to purchase this stock out of their Revolving Fund and the Penitentiary buy back from the Industries during 1943 out of the 1943-1944 Budget.

"We propose to buy all feeder stock and this stock would be fed with this years crops in order to be in condition to use in 1943.

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"We therefore submit this request to your office for an opinion as to whether or not we have the authority under law to make this purchase from the Revolving Fund of the Industries to be repaid by the penitentiary operations fund in 1943."

The officials of the penitentiary, by virtue of the provisions of Sections 9097 and 9098 R. S. Mo., 1939, have set up a revolving fund and provided for the disposition of this fund. Section 9097, in so far as it applies to the question here, is 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 9087 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. * * * * *

Section 9095 referred to in the foregoing section pertains to the twine plant. Section 9096 R. S. Mo., 1939, referred to in the foregoing section pertains to the authority of the board to purchase raw materials required for the manufacture of any article in any industry carried on by the board in the penitentiary.

The appropriation for the Missouri Penitentiary "revolving fund", Laws of Missouri, 1941, page 171, provides as follows:

"For the Missouri Penitentiary, chargeable to the Missouri Penitentiary Revolving Fund.—For the purchase of raw materials, machinery or other equipment, or in the erection of buildings or in making other improvements in plants in connection with the industries carried on or to be carried on in said penitentiary, or on the farms or land under the supervision of the State Prison Board, and in the manufacturing, handling and marketing of articles so produced, until disposed of in accordance with the provisions of Article 5, Chapter 48, of the Revised Statutes of Missouri, 1939, the sum of Three Million Two Hundred Sixty Thousand Dollars (\$3,260,000.00) or so much thereof as may be necessary during the period beginning January first, 1941, and ending on the thirty-first day of December, 1942, when the same shall have been collected and deposited to the credit of such said revolving fund.
* * * * *

"D. Operation:

"General expense: communica-
 tion, printing and binding, re-
 wards, transportation, travel
 within and without the State,
 labor of convicts, royalty,
 insurance, materials, supplies,
 clothing, dry goods, education-
 al, scientific and recreational
 supplies, farm and garden sup-
 plies, grounds and roadway ma-
 terials, household supplies,
 laundry, light, heating, power
 and water supplies, raw material
 for Industries, shop, stable and
 garage supplies (Ind.), small
 tools, miscellaneous supplies
 and repairs, stationery and of-
 fice supplies, stores (for re-
 sale) and special materials and
 supplies 2,900,000.00

"Total Penitentiary out of
 Revolving Fund \$3,260,000.00"

By subsection "D" under the head of opera-
 tion it seems that the lawmakers when they included
 within this item appropriations for "farm and garden
 supplies" construed the provisions of Section 9097
 and Section 9098 to include these terms within the
 term "revolving fund".

By applying the rule that legislation of a
 general character cannot be included in an appropri-
 ation bill, State ex rel Davis v. Smith, 75 S. W.
 (2d) 828, it would necessarily follow that the Legis-
 lature by the foregoing phrase in the appropriation
 bill could not broaden the provisions of said Sec-
 tions 9097 and 9098 pertaining to the revolving fund.

If the expenditures for farm operations could not be made from the revolving fund it would be on account of the provisions of Section 19, Article 10 of the Constitution which provides in part as follows:

"No moneys shall ever be paid out of the treasury of this State, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made, or a warrant shall have issued therefor, within two years after the passage of such appropriation act; and every such law, making a new appropriation, or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object to which it is to be applied; * * * * *

Again referring to Section 9097, this Section could be construed to include farming industry. If it does include farming industry then it would naturally follow that purchases of livestock, feed and machinery to carry on the farming activities would come within the class of activities included within the revolving fund.

When it is considered that one of the prime purposes of the penitentiary is to furnish occupation and teach trades to the inmates thereof and also to sustain them while confined therein the industry of farming is just as essential in carrying out the purposes of the law as is the twine plant, the broom factory, the furniture factory or any other industry carried on by the Department of Penal Institutions.

Mr. Paul V. Renz

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CONCLUSION

From the foregoing it is the opinion of this department that the Department of Penal Institutions is authorized under the law to make purchases of livestock for the farm industries of the Department of Penal Institutions and to pay therefor from the revolving fund of such industries.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

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