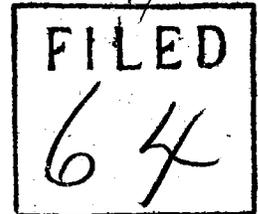


DEPARTMENT OF REVENUE: Effect and meaning of Senate Bill No. 143 of the 64th General Assembly relating to the duties and responsibility of the Director of Revenue and the duties of the subordinates thereunder.

July 3, 1947



Mr. M. E. Morris, Director,  
Department of Revenue,  
Jefferson City, Missouri.

Dear Mr. Morris:

This is in reply to your letter of May 29, 1947, wherein you requested an opinion of this department with reference to Senate Bill No. 143 of the 64th General Assembly relating to certain duties of the Director of Revenue. Said letter reads as follows:

"I have read with interest an opinion written by Assistant Attorney General G. W. Crowley, answering certain questions raised by the Director of the Department of Business and Administration in connection with his duties as provided by Senate Bill 348.

"Senate Bill 143 of the 64th General Assembly repeals certain sections of Senate Bill 297, passed by the Sixty-third General Assembly, and sets out the duties of the Director of Revenue. Sub-paragraph (B) of Section 4 provides that the Director of Revenue shall procure supplies, etc., and does not contain the wording 'on requisition of the heads of the various divisions' following the word 'procure', which is the subject of the opinion referred to. Will you please advise if this addition would permit the same interpretations as to the duty of the Director.

"One division of this Department is the Division of Public Buildings, which is controlled by a Board of Public Buildings and administered by a Director, appointed by the Board of Public Buildings. It would seem, therefore that the Director

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of Revenue would not be required to procure supplies, approve contractual services, etc., for this Division as a practical matter. I would appreciate information on this point.

"Sub-paragraph (N) of Senate Bill 143 provides that the Director of Revenue 'shall receive all appropriations to the Department..... and shall be responsible for the disbursement and expenditure thereof."

"The current appropriation for the Collection Division is made to the State Department of Revenue to the use of the Director thereof. The appropriation for the Procurement Division, the Division of Budget and Comptroller, the Division of Public Buildings, the State Tax Commission and the Board of Fund Commissioners did not contain this provision. The Comptroller and Purchasing Agent are appointed by the Governor with the consent of the Senate and, while Senate Bill 143 places the responsibility for the appropriation upon the Director of Revenue, House Bill 172, which appropriates the money, would seem to indicate that it is the intention of the Legislature to limit this responsibility to the Collection Division.

"I would appreciate an interpretation on this matter."

Your first question contained in the second paragraph may be stated thusly; Under Subsection (b) of Section 4 of Senate Bill No. 143 of the 64th General Assembly is it mandatory that the Director of Revenue procure the items listed, or may he delegate this procurement to the various divisional heads? Subsection (b) of Section 4 of Senate Bill 143 passed by the 64th General Assembly says: The Director of Revenue shall:

" \* \* \* \* (b) procure, either through the purchasing agent, or by other means authorized by law, supplies, material, equipment or contractual services for the department of revenue and for each division in the department; \* \* \* \* "

In your request you referred to an opinion of this department written by Mr. G. W. Crowley under date of April 28, 1947 to

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Honorable Bert Cooper, Director, Department of Business and Administration relating to his duties as provided by Senate Bill No. 348 of the 63rd General Assembly. For the purpose of our immediate question the provisions of this bill as it relates to certain duties of the Director of Business and Administration are quite similar to the provisions of Senate Bill No. 143 relating to the duties of the Director of Revenue, and in order to possibly draw an analogy between the two we direct our attention to certain provisions of both bills, and to what the above mentioned opinion held with reference to such provisions. In line with the reasoning of said opinion there is no provision in Senate Bill 143 declaring a penalty against the Director of Revenue, or which renders his actions illegal or void as a consequence of failure to comply literally with the terms of said Subsection (b) of Section 4 of said bill, which there should be in order for said section, or any part thereof, to be mandatory.

We think the above mentioned opinion of G. W. Crowley possesses sufficient authority and has accurately presented the law as to whether in construction of statutes those statutes are to be treated as mandatory. Suffice it to say that we think the rule generally as to such statutory construction may be expressed as was stated by the court in *State v. Bird* 244 S. W. 938 where they said at l.c. 939:

"Under a more general rule, this construction may be sustained, in that, if a statute merely requires certain things to be done and nowhere prescribes the result that shall follow if such things are not done, then the statute should be held to be directory. The rule thus stated is in harmony with that other well-recognized canon that statutes directing the mode of proceedings by public officers are to be held to be directory and are not to be regarded as essential to the validity of a proceeding unless it be so declared by the law. *State v. Cooke*, 14 Barb. (N.Y.) 259. By this we mean that if a fair consideration of the statute shows that, unless the Legislature intended compliance with the proviso to be essential to the validity of the proceeding, which nowhere appears, then it is to be regarded as merely directory. *People v. Thompson*, 67 Cal. 627, 9 Pac. 833; *Kenfield v. Irwin*, 52 Cal. 164; *Westbrook v. Rosborough*, 14 Cal. 180; *Jones v. State*, 1 Kan. 273."

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We believe then that the paragraph answering the related question in the opinion directed to the Director of Business and Administration may be used for the purpose of this opinion so as to read: It would be reasonable to conclude, we think, that since there is no other clause or sentence in Section 4 of Senate Bill No. 143 making Section 4, or the results of the authority therein directed to be used, invalid, if not carried out precisely as stated, and under the above cited authority, distinguishing between mandatory and directory statutes, Subsection (b) of Section 4 of said Senate Bill 143 is directory and not mandatory.

In *Kadane v. Clark* 134 S. W. 448 the Texas Court of Civil Appeals said at l.c. 456:

"'Procure' has many meanings as disclosed by the dictionary. Among other things it means 'to bring into possession--to acquire; to cause--to bring about; to solicit--entreat.'"

Such a definition would indicate that the word "procure", as used in the statute, would not necessarily mean to personally acquire.

It would follow then that by applying such construction to Subsection (b) of Section 4, as a practical matter, the Director of Revenue would not be required to personally procure the listed items of said subsection for the various divisions of his department, including the Division of Public Buildings.

The Director of the Department of Revenue would, of course, under Subsection (b) be expected to supervise, and when necessary check the procurement.

This and other sections of the bill would indicate that it was the intention of the Legislature to make the Director of Revenue the over-all authority and supervisor over the various divisions, whereby he may delegate certain authority to the divisional heads and still retain the necessary control and supervision. Any procurement by the divisional heads would in fact be the procurement and responsibility of the director of the department. The division heads in your department are both in effect and authority the agents of the director and as such are acting for him.

The above will in part furnish an answer to your last question, which has to do with the interpretation of Subsection (n) Section 4 of said Senate Bill 143. Subsection (n) says the Director of Revenue shall:

"\* \* \* \* (n) receive all appropriations to the department of revenue for the use

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of the department of revenue and the several divisions thereof and shall be responsible for the disbursement and expenditure thereof."

As was pointed out in your letter of request, the current appropriation for the Department of Revenue is provided for in House Bill No. 172. As will be noted from a reading of this bill the current appropriation for the Collection Division is made, "chargeable to the General Revenue Fund, to the State Department of Revenue to the use of the Director thereof, the sum of \* \* \* \* \*," for the purpose of paying salaries, wages, repair and replacement of property, operating expenses, etc. The appropriation for the Procurement Division, the Division of Budget and Comptroller, the Division of Public Buildings, the State Tax Commission and the Board of Fund Commissioners does not contain the provision "to the use of the Director thereof," but merely reads "chargeable to the General Revenue Fund the sum of \* \* \* \* \*," and then provides that such sum is for the purpose of paying salaries, wages, repair and replacement of property, operating expenses of the division. Does the omission of the provision, "to the use of the Director thereof" indicate that it is the intention of the Legislature to limit the director's responsibility to the Collection Division? We feel the same reasoning can be employed here as was above indicated; namely, that the Director of Revenue is in charge of the department and the divisions therein. As such he has the general supervision and responsibility for each division. As we pointed out above with reference to Subsection (b) of Section 4, so in our interpretation of Subsection (n) must we conclude that the statutes are to be interpreted as directory rather than mandatory. As such, the portions of House Bill 172 relating to the appropriations for the Procurement Division, the Division of Budget and Comptroller, the Division of Public Buildings, the State Tax Commission and the Board of Fund Commissioners, which omitted the words "to the use of the Director thereof" would not limit the responsibility of the director but would mean that as to these above named divisions the appropriation would be to the use of the division and the division heads thereof who are in effect and authority the agents of the Director of Revenue subject to his supervisory control and authority. The director may delegate authority to the division heads, but this does not relieve him of the responsibility for the disbursement and expenditure of the appropriations.

#### CONCLUSION

In view of the above, it is the opinion of this department that the terms and provisions of Subsection (b) Section 4, of Senate Bill 143

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of the 64th General Assembly are directory and not mandatory. Applying such an interpretation it would follow that the Director of Revenue is responsible for, and must maintain a supervisory control over, the procurement of supplies, materials, equipment or contractual services for the Department of Revenue and for each division in the department, but may delegate the actual procurement thereof to the proper divisional head. The same interpretation would apply as to Subsection (n) Section 4, of said Senate Bill 143, and it would follow that the responsibility for the appropriation and the disbursement and expenditure thereof is not shifted from the director by virtue of the appropriation bill No. 172, but the duties thereunder may be delegated to the divisional heads.

Respectfully submitted,

WM. C. COCKRILL,  
Assistant Attorney General.

APPROVED:

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J. E. TAYLOR  
Attorney General