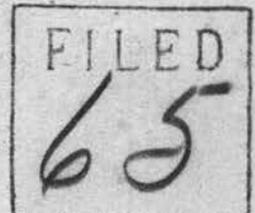


APPROPRIATION FOR OFFICE : The Director of the Division of  
OF THE DIRECTOR OF DIVI- : Mental Diseases has authority, with  
SION OF MENTAL DISEASES. : the ordinary departmental approval,  
: to employ firm of consulting engi-  
: neers to make survey of water facil-  
: ities at state hospital, and pay  
: said firm out of funds appropriated  
: for payment of necessary employees  
: of the office of said director.

5-27  
May 25, 1948.



Dr. Orr Mullinax, M.D.,  
Director,  
Division of Mental Diseases,  
State Office Bldg.,  
Jefferson City, Missouri.

Dear Dr. Mullinax:

We have your letter of May 11, 1948, in which you request an opinion of this department. Your letter is as follows:

"I am requesting an opinion of your department on questions arising out of the following state of facts: Section 5.100, Laws of Missouri, 1947, being the section appropriating certain funds to my Division, being the Division of Mental Diseases of the Department of Public Health and Welfare, and more particularly that portion of said section under sub-division A under the classification of 'Personal Service' appropriates the sum of \$11,000.00 and specifies that this sum is appropriated for salaries of the assistant, bookkeepers, stenographers, and other necessary employees.

"We find it highly necessary and important to make a survey of the water system at State Hospital No. 3 at Nevada and we find that this service can be most expeditiously and efficiently rendered by Black and Veatch, a firm of Consulting Engineers located in Kansas City, Missouri.

"The foregoing facts give rise to the following questions:

"1. Is there any reason why, when there is sufficient money under the above mentioned appropriation, to pay for the services of these engineers above-mentioned, such money should not be expended for the procuring of this much needed survey and report?

"2. Are the words 'other necessary employees' as used in the statute broad enough to permit my Division to employ an engineering firm instead of an individual?"

In considering the questions propounded in your above-quoted letter, we shall first refer to and set forth the language of the appropriation act involved, which is found under Section 5.100, Laws of Missouri, 1947, p. 114, and is as follows:

"There is hereby appropriated out of the State Treasury, chargeable to the General Revenue Fund, the sum of Twenty-two Thousand Five Hundred Dollars (\$22,500.00) to pay the salaries, wages and per diem of officers and employees; for the original purchase of property; for the repair and replacement of property, and for other necessary expenses of the office of the Director of the Division of Mental Diseases in the Department of Health and Welfare; for the period beginning July 1, 1947 and ending June 30, 1948, as follows:

"A. PERSONAL SERVICE:

"Salary of Director	\$7,500.00
"Salaries of the assistant, bookkeepers, stenographers, and other necessary employees,	11,000.00

"B. ADDITIONS:

"Furniture, office and building equipment, and operative equipment,	500.00
---	--------

"C. REPAIRS AND REPLACEMENTS:

"Operative and miscellaneous equipment, transportation and conveying equipment, office furniture and equipment, repairs, materials and supplies,	500.00
--	--------

"D. OPERATION:

"General expense; including communication, printing and binding, travel within and without the state, bonds, insurance, and other or office expense,	3,000.00
--	----------

"Total out of General Revenue Fund,	<u>\$22,500.00</u> "
-------------------------------------	----------------------

(Underscoring ours).

Article 4, Section 23 of the present Constitution of Missouri provides as follows:

"Every appropriation law shall distinctly specify the amount and purpose of the appropriation without reference to any other law to fix the amount or purpose." (Underscoring ours).

In view of this explicit constitutional provision above quoted, to the effect that the amount and purpose of any appropriation must be distinctly specified, we believe that it follows that the language and terms used in an appropriation act, descriptive of the purpose of the appropriation, must be given a specific rather than a general construction. In other words, it is to be presumed that the Legislature intended the descriptive words or terms used to amount to a designated specification of the purpose for which the money is appropriated, because the Constitution requires that the purpose be distinctly specified.

Your inquiry involves the question as to whether or not the words or terms, descriptive of the purpose for which the money in the appropriation act under consideration is appropriated, are broad enough in their meaning to warrant the payment therefrom of employees engaged in a survey of the water facilities at State Hospital No. 3, at Nevada, Missouri.

After this statement of the purposes of the appropriation, the act appropriates the sum of \$11,000.00 for salaries of: "the assistant, bookkeepers, stenographers and other necessary employees", and thereby limits the meaning of the term "office" to the Director of the Division and those persons working with him and under his immediate direction. The appropriation covers the salaries of necessary employees of the office. The first question then is, what employees are necessary employees of the office? Whoever is a necessary employee of the office may be paid from this fund. Obviously, any employee whose services are essential to the fulfillment of the duties of the office is a necessary employee of the office.

This brings us to the consideration of the duties of the office of the Director of the Division of Mental Diseases. We find these duties sufficiently set forth for the purposes of this opinion in Sec. 28 of the Act entitled "Department of Public Health and Welfare", Laws Mo. 1945, p. 945, l.c. 953, as follows:

"\* \* \* Said Director of the Division of Mental Diseases shall have supervision and direct care over the business management of the several institutions under control of the Division, over the buildings, farm lands, livestock, equipment, machinery and other facilities of the institutions. \* \* \* It shall be his duty \* \* \* to make investigations of any complaints which may come to his attention, to advise the department as to the needs of the several institutions and activities, and to perform any other duties pertaining to administering the Division of Mental Diseases.\* \* \*". (Underscoring ours).

We are of the opinion that under the foregoing section a necessary survey of the water supply facilities of a state hospital, the adequacy of which has been called into question, is among the duties of the Director's office, and that necessary employees for the making of said survey may be paid from the above-mentioned appropriation.

Since we hold that the making of this survey comes within the purview of the duties of the office of the Director, and that employees engaged in the survey or investigation may be paid out of the above-mentioned appropriation, it is necessary to consider whether the Director has authority to engage the services of a firm of Consulting Engineers to do this work and to compensate said firm out of the aforesaid appropriation. We believe it to be entirely relevant to the matter in issue to point out that we have been reliably informed that the Division of Health has already made a survey of the water supply system at the Nevada State Hospital, and has reported as follows:

#### "FIELD SURVEY AND DISCUSSION

"WATER SUPPLY - The water supply at State Hospital No. 3 is obtained from two drilled wells, 750 feet deep and 1,150 feet deep, respectively. The water is pumped from the wells into an aerator, and flows from the aerator into a concrete reservoir. A new concrete reservoir is being constructed and will be operated in parallel with the present reservoir. From the reservoir the water is pumped to an elevated steel tank and the hospital distribution system. Soft water is sup-

plied to the boilers from a lime - soda-ash softening plant and soft water is supplied to the laundry through a zeolite softener. The raw water supply is extremely corrosive and the present facilities for treatment are not adequate to stabilize the water or make it satisfactory for domestic purposes. The source of water supply, the water treatment plant, and the water distribution system should be investigated in detail by a competent engineer as a prerequisite to providing adequate potable water for the Nevada Hospital.

"RECOMMENDATIONS -

"2. WATER SUPPLY. That a competent engineer be retained to make a complete survey, with report and recommendations, of the water supply. This survey and report should include the source of supply, the present treatment facilities, the storage facilities, the pumping and distribution system, and the water softening plant."

The above-quoted report corroborates your contention, that the above-mentioned scientific survey of the water system at the Nevada institution is necessary and important.

The Act establishing the Department of Health and Welfare provides for three divisions thereof; the Division of Mental Diseases being one of them. Laws No. 1945, p. 945, l.c. 946. Section 6 of said Act, l.c. 947, provides as follows:

"Each Division Director shall appoint, subject to the approval of the Director of the Department, all employees in his division\* \*".

Section 7 provides as follows:

"\* \* \* Below the rank of Director and Assistant Director, all employees shall be selected on the basis of merit, as provided by law.\* \* It shall be the meaning of this section that selection on the basis of merit, as provided by law, shall have reference only to laws passed by the General Assembly of the State of Missouri.\* \*"

A merit system applicable to employees in the Division of Mental Diseases has been established by the "Missouri Merit System Act". Laws No. 1945, p. 1157.

The question then occurs as to whether or not a firm employed for the purpose of making the survey in question at the Nevada Hospital would come under the authority of that act and its provision, for examination and discharge. In this connection, we call attention to Paragraph C of Section 2 of said Act, Laws Mo. 1945, p. 1158, which is in part as follows:

"\* \* \* The following offices, positions and appointments in the agencies covered by this act are hereby exempted from the operation of this act and may be filled without regard to those provisions hereof which relate to the selection, appointment, pay, tenure and removal of persons employed in such agencies:

"(4) Physicians, chaplains and attorneys regularly employed or appointed in any department or division subject to this act, persons employed in a professional or scientific capacity to make or conduct a temporary and special inquiry, investigation, or examination, and persons whose employment is such that selection by competitive examination is not practicable under all the circumstances." (Underscoring ours.)

We deduce from the above-quoted provision of the act establishing the Department of Public Welfare, providing for appointment by the Director of the Division of employees, with the approval of the Director of Public Welfare, there being no limitation of that power prescribed, that he may appoint employees for the purpose of performing any of the duties involved in the administration of said Division, and we deduce from the above-quoted exceptions to the Merit System Act, that employees employed in a scientific capacity are not subject to the Merit System Act with its several limitations.

We also suggest the fact that the above-quoted provision of the Merit System Act gives legislative sanction to the employment of persons in a professional or scientific capacity to conduct a temporary and special inquiry, investigation or examination in the departments to which it generally applies, which include the Division of Mental Diseases.

We are of the opinion, therefore, that there is legal authority for the making of this survey, and that the duty to make said survey is a duty of the Director of Mental Diseases, and that the employee appointed to perform such duty is not sub-

Dr. Orr Mullinax,

-7-

ject to the provisions of the Merit System Act.

Relative to the question as to whether the Director can employ a firm of Consulting Engineers to do this work, we comment that we find no limitation, either in the Constitution or in the applicable statutes, prohibiting the employment of a firm. It might be otherwise, if persons employed in a scientific capacity were not exempted from the provisions of the Merit System Act because the competitive examination feature of the act could not be complied with by a firm, but only by an individual; but since those engaged in scientific research of a temporary nature are exempt from the provisions of the Merit System Act, this competitive examination limitation does not exist. We are of the opinion that, in determining this question, we should have in mind the fact that the general purpose of the law is that all necessary work shall be done. If it shall appear that the firm named in your letter is, in your judgment, qualified to do the work, we are of the opinion that you have the right to employ it and pay it as you would an individual. A firm is a legal entity and acts as an individual, and has the advantage of the scientific knowledge of its several individual members, and might be more accurate than an individual in its conclusions. We suggest, however, that if a firm be employed it should be treated as an employee, have its duties specifically assigned to it and its salary specified, and its activities should be under the supervision and direction of the Division Director; and it should not be treated as an independent contractor.

#### CONCLUSION.

We are, therefore, of the opinion that, with the ordinary departmental approval, you have the authority to employ a firm of Consulting Engineers to make the needed survey for a specified salary or compensation, and to pay said firm out of the salary appropriation above referred to.

Respectfully submitted,

SAMUEL M. WATSON  
Assistant Attorney General

APPROVED:

J. E. TAYLOR  
Attorney-General

SMW/LD