

VOCATIONAL
REHABILITATION:
INSURANCE:

A person receiving vocational rehabilitation training, having in his custody property owned by the state of Missouri has an insurable interest in such property. The proceeds of such policy may be made payable either to the State Treasurer for the State of Missouri or to the State Board of Education. Disbursement of the proceeds payable by the insurer depends upon who is named beneficiary.

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2/9/51



Mr. Joy O. Talley, Director
Vocational Rehabilitation
Division of Public Schools
Room 1, Hotel Governor
Jefferson City, Missouri

Dear Sir:

This will acknowledge receipt of your recent letter requesting an opinion from this office. Your request reads as follows:

"A client of the Section of Vocational Rehabilitation, Department of Education, for whom we recently purchased \$800.00 worth of shoe repair placement equipment, would like to purchase some fire insurance to cover this equipment. The client understands that the title to this equipment remains with the state and that he cannot now nor at any future time claim this equipment as his own. He, however, would like to carry some insurance on the equipment in order to protect the state and, indirectly, to protect himself. He is ready, willing, and anxious to purchase the fire insurance and to pay for it himself, but does not know how the policy should be made out.

"We would like an opinion from your office as to whether or not such insurance could be bought, and whether or not the beneficiary should be the State of Missouri or the Section of Vocational Rehabilitation. Also, if settlement were made by the insurance company in case of damage could the money be used by the Section of Vocational Rehabilitation or would it revert to the general revenue of the state?"

Mr. Joy O. Talley, Director.

The rehabilitation client is in the position of a bailee of the property placed in his possession by your department for his use. He has an insurable interest in the property and may enter into a contract of insurance against loss of the property which he has in his possession.

In the case of American Surety Co., of New York v. Normandy State Bank (108 F.2d. 819), the court in discussing the right of a bailee to purchase insurance under Missouri law, said:

"One seeking to recover on a policy of burglary and theft insurance must, of course, allege and prove that he has an insurable interest in the property described in the policy.
* * * It has been held that one having the care, custody or possession of property for another, though without liability and without any pecuniary interest, may nevertheless obtain insurance upon such property for the benefit of the owner. (citations)."

In this recent decision the court held that any bailee or person in custody of property and responsible for it may purchase insurance against loss. Following this decision it is the opinion of this office that the rehabilitation client has an insurable interest in the property placed in his custody for use as described in your letter.

Inasmuch as the individual receiving vocational rehabilitation is not required by law to enter into a contract of insurance on property used by him and to pay premiums on such a contract it is within his option to make the proceeds of the policy, in the event of loss, payable either (1) to the State Treasurer for the State of Missouri or (2) to the State Board of Education. A discussion of the disposition of the proceeds of the insurance policy under each option will be made.

(1) In the event the rehabilitation client makes the proceeds of the policy payable to the State Treasurer for the State of Missouri, as he may elect to do because the State is the legal owner of the property, such proceeds would be payable into the treasury and the fund could not be disbursed except pursuant to appropriation made by the General Assembly.

Your attention is directed to Article III, Section 36 of the state constitution which reads in part as follows:

"All revenue collected and money received by

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the state shall go into the treasury and the general assembly shall have no power to divert the same or to permit the withdrawal of money from the treasury, except in pursuance of appropriations made by law. * * *

And to Article IV, Section 15 which reads in part as follows:

"The state treasurer shall be custodian of all state funds. All revenue collected and moneys received by the state from any source whatsoever shall go promptly into the state treasury, and all interest, income and returns therefrom shall belong to the state. Immediately on receipt thereof the state treasurer shall deposit all moneys in the state treasury to the credit of the state in banking institutions selected by him and approved by the governor and state auditor, and he shall hold them for the benefit of the respective funds to which they belong and disburse them as provided by law. * * *

Under these provisions of the state constitution requiring money received by the state to be paid into the State Treasury if the user of the property elects to make the proceed of the policy payable to the State of Missouri then such proceeds, should loss be incurred, would be paid into the State Treasury. Further, the state treasurer under these provisions of the constitution is not authorized to divert money or permit withdrawals from the treasury except in pursuance of appropriations made by the General Assembly.

(2) The user of the property may elect to make the proceeds of an insurance policy payable to the State Board of Education under the provisions of RSMo. 1949, Section 162.320, which reads as follows:

"The state board of education is hereby authorized and empowered to receive such gifts and donations, either from public or private sources, as may be offered unconditionally or under such conditions related to the vocational rehabilitation of persons disabled in industry or otherwise and consistent with the provisions of sections 162.280 to 162.320. All moneys received as

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gifts or donations shall be deposited in the state treasury and shall constitute a permanent fund to be called the special fund for the vocational rehabilitation of disabled persons, to be used by the said board to defray the expenses of vocational rehabilitation in special cases including the payment of necessary expenses of persons undergoing training. A full report of all gifts and donations, offered and accepted, together with the names of the donors and the respective amounts contributed by each, and all disbursements therefrom shall be submitted biennially to the general assembly."

Since the individual receiving vocational rehabilitation assistance is under no legal obligation to enter into a contract of insurance on property used by him and pay premiums on such a contract such payments are in the nature of a gift or donation to the state and the proceeds of the policy, in the event of loss, could be made payable to the state board of education and disposed of as directed by Section 162.320, quoted above. The fact that the State Board of Education will actually receive nothing except upon the happening of a contingency, i.e. the destruction or damage, to the property makes it none the less a gift. Reimbursement for loss would not be made directly to the section of Vocational Rehabilitation but to the State Board of Education who is authorized to receive gifts or donations and deposit them as directed by Section 162.320, in the state treasury which is charged with the responsibility of acting as custodian of such funds. This fund would not constitute a gift from the insuring company from whom the State Board of Education would have a legal right to recover in the event of loss but a gift from the rehabilitation client which would only become payable upon the happening of a contingency, i.e. loss or damage to the property.

In the case of State ex rel. L.D. Thompson v. Board of Regents of Northeast Missouri Teacher's College, 305 Mo. 57, the court was discussing the disposition of proceeds of a fire insurance contract received by the college as a result of loss by fire. The premiums for the policy were paid with money which was not appropriated by the State Legislature. In that case the court ruled the proceeds of the policy should be paid to the Board of Regents of the college in the absence of a statute otherwise directing their disposal. A statute does control the disposition of the fund involved in your inquiry.

The question presented by you is resolved by the statute which

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requires that all money received as gifts or donations for this fund shall be deposited in the state treasury and shall constitute a special fund for the vocational rehabilitation of disabled persons, to be used by the board of education to defray the expenses of vocational rehabilitation in special cases including the payment of necessary expenses of persons undergoing training.

The Legislature has appropriated money coming into the state treasury to the state board of education in the following words (L 1949, p. 20, Sec. 2.033):

"All allotments, grants and contributions of funds from the federal government or other sources which may be received for the period beginning July 1, 1949 and ending June 30, 1951, for the purpose of providing for vocational rehabilitation * * * shall stand and are hereby appropriated to the State Board of Education. * * *" (Underscoring ours)

While Section 162.320 requires a full report of all gifts and donations and all disbursements therefrom be submitted to the General Assembly biennially, a fund created by such gifts or donations would require no further appropriation than that already made by Section 2.033, L 1949, p.20, quoted above, as a prerequisite to making disbursements therefrom.

CONCLUSION

A person under the direction of the Section of Vocational Rehabilitation having in his custody for use property owned by the State of Missouri has an insurable interest in such property and may purchase insurance thereon.

The proceeds of such policy may be made payable to the State Treasurer for the State of Missouri in the event of loss, because the state is the legal owner of the property. If the proceeds are made payable to the State of Missouri the Section of Vocational Rehabilitation could not use the funds paid by the insurer to the State until such fund was re-appropriated by the State General Assembly.

The rehabilitation client may, at his option, make the proceeds of the policy payable to the State Board of Education of the State of Missouri, and in the event of loss, the proceeds of the policy must be paid to the State Board of Education and deposited in the state treasury in the permanent fund called the special fund for vocational rehabilitation of disabled persons,

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to be used by said Board to defray the expenses of vocational rehabilitation in special cases including the payment of necessary expenses of persons undergoing training. While the Board is required to submit a full report of the contributions to the fund and disbursements therefrom biennially to the General Assembly the board may order disbursements from the fund pursuant to appropriation made by the General Assembly in Laws 1949, p. 20, Sec. 2.033.

The proceeds of the policy should not be made payable to the Section of Vocational Rehabilitation.

Respectfully submitted,

JOHN E. MILLS
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APPROVED:

OK

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JEM:mw