

ELEEMOSYNARY INSTITUTIONS: Purchasing Agent authorized to conduct sale of livestock, produce, etc., produced by eleemosynary institutions and pay proceeds therefrom into revolving fund of institution until such fund reaches \$5000, and any surplus above that paid into state treasury to credit of the fund for the support of eleemosynary institutions.

PURCHASING AGENT:

April 17, 1946



Honorable W. R. Painter
President, Board of Managers
State Eleemosynary Institutions
Capitol Building
Jefferson City, Missouri

Dear Governor Painter:

We hereby acknowledge receipt of your request for an opinion, which reads as follows:

"We are of the belief that under Section 9299, R. S. Mo., 1939, the Board of Managers of the State Eleemosynary Institutions acting through the steward of the various institutions has the authority to sell livestock, produce and other commodities produced by the institutions and the moneys derived therefrom to be paid into a revolving fund.

"The State Purchasing Agent is of the belief that under Section 14595 such sales should be handled by his department and that the proceeds therefrom should be turned over to the State Treasurer.

"We should like to be advised as to which process is authorized to handle such sales."

At the outset it is well to include the sections of the statute to which your request makes reference. Section 9299, R. S. Mo. 1939, provides:

"Upon a request from the board, the state auditor is hereby authorized

and directed to draw a warrant payable to the steward of each of the institutions herein named, in an amount to be specified by the board, not to exceed, however, the sum of five thousand dollars, and the sum so specified shall be placed in the hands of the steward as a revolving fund to be used in the payment of the incidental expenses of the institution for which he has been appointed; and all moneys arising from the sale of live stock, produce, or other commodities produced by such institution shall be paid into said revolving fund, and whenever the amount thereof exceeds the sum of five thousand dollars, then such surplus shall be paid into the state treasury to the credit of the fund for the support of eleemosynary institutions. The steward shall keep a true and accurate account of all moneys received and of all moneys paid out of said fund and shall take and preserve vouchers for all expenditures therefrom. Whenever said fund shall fall below the amount necessary to have on hand for the payment of incidental expenses, and within the limits of the maximum herein prescribed, the state auditor shall, upon request of the board, make additional allowances to said fund by drawing his warrant upon the state treasurer for the amount necessary to replenish said fund."
(Underscoring ours.)

Section 14595, R. S. Mo. 1939, provides:

"The purchasing agent shall have the power to transfer supplies from any department where they are not needed to any other department where they are needed and to direct that proper charges and credits be made on the appropriations of the departments concerned. He shall also have power, subject to the same

provisions as for bids for purchases, to sell any surplus or unneeded supplies or property in his hands or owned by the state or any department thereof. He shall keep currently an inventory of all removable equipment owned by the state." (Underscoring ours.)

It might appear at first blush that the underscored portions of these sections are not harmonious. If it be that there is any inconsistency between them the Purchasing Agent Act must prevail since it also provides in Section 14602 thereof as follows:

"All acts or parts of acts inconsistent or in conflict with this chapter are hereby repealed to the extent of such inconsistency or conflict."

This section was adopted in 1933 as part of the State Purchasing Agent Act, whereas the State Eleemosynary Institution Act was adopted in 1921, and it would be effective if Sections 9299 and 14595, supra, were inconsistent. However, we are bound to follow the rule as set out in the case of *Graves v. Little Tarkio Drainage Dist. No. 1*, 134 S. W. (2d) 70, 1. c. 81, 345 Mo. 557, wherein it is stated:

"* * * 'Repeals by implication are not favored--in order for a later statute to operate as a repeal by implication of an earlier one, there must be such manifest and total repugnance that the two cannot stand; where two acts are seemingly repugnant, they must, if possible, be so construed that the latter may not operate as a repeal of the earlier one by implication; if they are not irreconcilably inconsistent, both must stand. These principles of construction are well settled.' State ex rel. and to Use of Geo. B. Peck Co. v. Brown, 340 Mo. 1189, 1193, 105 S. W. 2d 909, 911. * * *"

Accordingly, it is possible to reconcile these two sections. Section 9299 does place the stewards of the various

eleemosynary institutions in charge of the revolving funds. This section further provides that "all moneys arising from the sale of live stock, produce, or other commodities produced by such institution shall be paid into said revolving fund, and whenever the amount thereof exceeds the sum of five thousand dollars, then such surplus shall be paid into the state treasury to the credit of the fund for the support of eleemosynary institutions." This phrase does not specifically name any person or officer to conduct such sales but merely provides for the depositing of the moneys arising therefrom. On the other hand, Section 14595, supra, is specific in its terms wherein it states that the purchasing agent "shall also have power * * * to sell any surplus or unneeded supplies or property in his hands or owned by the state or any department thereof." Under this provision the purchasing agent is authorized to handle the sales referred to in Section 9299.

Conclusion

It is, therefore, the opinion of this department that the sale of livestock, produce, or other commodities produced by the eleemosynary institutions, as provided in Section 9299, R. S. Mo. 1939, should be under the direction of the State purchasing Agent by virtue of the authority vested in him under Section 14595, R. S. Mo. 1939, and that he, the State Purchasing Agent, should then pay the proceeds therefrom into the revolving fund of the institution for which he has conducted such sale. Such fund is not to exceed five thousand dollars and any surplus above that shall be paid into the State Treasury to the credit of the fund for the support of eleemosynary institutions.

Respectfully submitted,

J. MARTIN ANDERSON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General