

ELEEMOSYNARY INSTITUTIONS: State Purchasing agent has power to
PURCHASING AGENT: sell surplus produce of respective
eleemosynary institutions.

September 4, 1941

Mr. Ira A. Jones
President, Board of Managers
State Eleemosynary Institutions
Jefferson City, Missouri



Dear Mr. Jones:

This will acknowledge your request for an opinion, wherein you state as follows:

"The question has been raised by the office of the State Purchasing Agent as to whether the stewards of the respective state eleemosynary institutions have the authority to dispose of surplus livestock, produce and other commodities produced by the various eleemosynary institutions.

"We will appreciate your opinion on said question."

Section 9299, R. S. Mo. 1939, provides for the sale of surplus produce of the respective eleemosynary institutions, in part as follows:

"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 above section does not expressly authorize the stewards of the respective eleemosynary institutions to sell the surplus produce. However, when considered in conjunction with Section 9290, R. S. Mo., 1939, their authority to make such sales cannot be readily disputed. Said section provides as follows:

"The steward shall be the custodian of all the property of every kind and description belonging to the institution for which he has been appointed steward."

The 57th General Assembly created the office of State Purchasing Agent and provided that (Laws of Missouri, 1933, Section 7, page 410, now Section 14595, R. S. Mo. 1939):

"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."

The above section uses the word "property," which term is defined by Section 655, R. S. Mo. 1939, as follows:

"The construction of all statutes of this state shall be by the following additional rules, unless such construction be plainly repugnant to the intent of the legislature, or of the context of the same statute:
* * * * *
eleventh, the word 'property' shall include real and personal property;
* * * * *"

Personal property would obviously be broad enough to include livestock and produce.

There appears then to be a conflict between Section 9299 and Section 14595, supra, as to where the respective authority is lodged for the disposal of surplus produce or property of the respective eleemosynary institutions.

Section 9299, supra, is a special statute relating to the disposal of surplus produce of the respective eleemosynary institutions, whereas, Section 14595, supra, is a general statute relating to the disposal of surplus produce or property owned by the state or any department thereof.

The applicable rules of statutory construction are well stated in the case of State v. Brown, 334 Mo. 781, 68 S. W. (2d) 55, 1. c. 59, wherein the court said:

"In such case the rule applicable is that 'where there is one statute dealing with a subject in general and comprehensive terms and another dealing with a part of the same subject in a more minute and definite way, the

two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy; but to the extent of any necessary repugnancy between them, the special will prevail over the general statute. Where the special statute is later, it will be regarded as an exception to, or qualification of, the prior general one; and where the general act is later, the special will be construed as remaining an exception to its terms, unless it is repealed in express words or by necessary implication.' Tevis et al. v. Foley, 325 Mo. 1050, 1054, 30 S. W. (2d) 68, 69; State ex rel. Buchanan County v. Fulks, 296 Mo. 614, 626, 247 S. W. 129; State ex inf. Barrett v. Imhoff, 291 Mo. 603, 617, 238 S. W. 122."

Section 14602, R. S. Mo. 1939, relating to the State Purchasing Agent, repeals inconsistent or conflicting acts 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."

We have not overlooked the rule, "Repeal of a special law by implication, through the enactment of a general law, is not favored" (Collins v. Twellman, 344 Mo. 330, 126 S. W. (2d) 231, 1. c. 233). However, the act containing the general law expressly repeals all acts or parts of acts inconsistent or in conflict "with this chapter."

The legislative policy appears to be that funds received from the sale of surplus products of the respective eleemosynary institutions should be put into a revolving fund, and the two sections can be readily harmonized to accomplish this.

Mr. Ira A. Jones

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From the foregoing we are of the opinion that the State Purchasing Agent has the power to sell the surplus livestock, produce and commodities of the respective state eleemosynary institutions but the moneys received from such sales by the State Purchasing Agent must be paid into the respective revolving funds of said institutions.

Respectfully submitted,

MAX WASSERMAN
Assistant Attorney-General

APPROVED:

VANE C. THURLO
(Acting) Attorney-General

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