

State Prison, Appointment of Warden For. Warden State Prison, Claim for Salaries, Etc.

The state board of prison commissioners have authority to take charge of the prison and appoint a warden. When this has been done, the salary of the warden and all claims incurred in the management of the state prison, under his direction, when allowed by the board of examiners, are proper charges against the appropriation for the maintenance of the state prison, and should be paid by the auditor. When the board authorizes the aggregate of such claims to be paid directly to the warden, to be by him disbursed to the several claimants, the auditor has authority to make the warrant for the whole amount to him, as warden.

Helena, Montana, August 20, 1908.

Hon. H. R. Cunningham,
State Auditor,
Helena, Montana.

Dear Sir:—

Your letter of the 20th inst. received, regarding the bills for the maintenance of the state prison, for the period from July 1st, to the 31st inclusive, of 1908. You ask if the warrant for all these claims may be

drawn in favor of Mr. Frank Conley, the warden; also you request an opinion as to the rights of Frank Conley under his appointment as warden of the state prison.

In answer to your first question, you are advised that, under Section 9726, Revised Codes, all claims against the state prison must be certified to by the warden and delivered to the secretary of the board, and if the accounts are correct the board must audit and allow the claims, which must be paid as other indebtedness against the state prison. The various claims for supplies, salary, etc., were duly made out and signed by the claimants and certified to as correct by Frank Conley, as warden. The board audited each of these claims and found them correct, and then ordered that a warrant be drawn direct to Frank Conley for the full amount of all such claims, and that he, upon receipt of such warrant, should pay the respective claimants the amounts due them, as shown by their claims filed with the board. This procedure was adopted by the board in order to avoid the issuance of numerous state warrants direct to the several claimants. You are therefore advised that, in our opinion, you are authorized to follow the instructions of the board, and draw the warrant to Frank Conley, as warden, for the total amount.

As to your second question, you are advised that the laws of this state governing the state prison provide for two methods of governing the same. Sections 9716 to 9745, Revised Codes, provide for the management of the prison by the state board of prison commissioners, by and through a warden to be appointed by the board in the manner provided by Section 9720 of the Revised Codes.

Section 9750 provides another method for the management of the state prison, in that it says: "The board is hereby authorized and empowered to invite, by publication, sealed proposals for the custody and maintenance of all prisoners confined in the state prison for the period of two years."

This latter law, adopted on March 10th, 1893, merely gives the state board of prison commissioners authority, whenever they deem it for the best interests of the state, to care for the prisoners under the contract system, but it in no way conflicts with the provisions of the law providing for the control of the prison and prisoners by the board itself, through the appointment of a warden.

For many years past, the board has deemed it advisable to follow the contract system; but during the month of June of this year, the board decided to abolish the contract system, and to take charge of the state prison and appoint a warden, and to control and manage the same pursuant to the provisions of said Sections 9716 to 9745; and thereafter, the board, in accordance with such law, appointed Mr. Frank Conley as warden, and fixed his salary at \$3,000 per annum, and his official bond at the sum of \$10,000. Mr. Conley duly filed his bond and qualified as warden, and is now the duly appointed, qualified and acting warden for the state prison, and is entitled to his salary as such warden.

Yours very truly,

ALBERT J. GALEN,
Attorney General.