

**OPINION  
43-17**

February 13, 1943            (OPINION)

APPROPRIATION

RE: Charitable Institutions

This is in reply to your letter of February 12th relating to the appropriation for St. John's Orphanage.

You state that the bill presented by St. John's Orphanage for care given children during the month of December, 1942, was disallowed by the State Auditing Board for the reason that it exceeded seventy-five percent of the appropriation to the agency. You inquire whether or not the seventy-five percent limitation on appropriations for the first eighteen months of the biennium under the provisions of chapter 22 of the Session Laws of 1941 is applicable to this situation.

Chapter 57 of the Session Laws of 1941 makes the appropriation for St. John's Orphanage. It appropriates \$10,000.00 for the biennium or so much thereof as may be necessary to the Childrens' Welfare Bureau and by its director apportioned to St. John's Orphanage in the following manner, to wit: the sum of \$10.00 per month shall be paid to said St. John's Orphanage for the support and maintenance of each poor and indigent infant child while their age or general condition necessitates their remaining charges in said Home as determined by the superintendent or superior in charge.

Chapter 22 of the Session Laws of 1941 provides that seventy-five percent of the total of all appropriations and of each separate item thereof made by the Legislative Assembly for the maintenance of any State institution, department, board, commission, or bureau for the biennium shall become available on the first day of July next succeeding the enactment by the Legislature and the remaining twenty-five percent of any such appropriation shall be available only at the beginning of the fourth quarter of the biennium.

You will note that the seventy-five percent limitation applies to the maintenance of any State institution, etc.

Maintenance as defined by the Courts means "to preserve or keep in an existing state or condition and embraces act of repair and other acts to prevent a decline, lapse, or cessation from that state or condition and has been taken to be synonymous with repair." There is no substantial difference between "maintenance" and "maintaining and operating." *Roberts v. City of North Anveles*, 61 Pac. 2d 323.

The appropriations for St. John's Orphanage and for the other charitable institutions were not made for maintenance, but were made for a specific purpose as set out in said Act. In

the case of St. John's Orphanage the funds appropriated are to be paid out at the rate of \$10.00 per month for the support and maintenance of each poor and indigent infant child and it follows that all of the appropriation could be paid out in a single year or in less time if there were a sufficient number of indigent infant children whose needs and condition required such assistance.

There is, however, another point decisive of the question involved here. You will observe that the provisions of said Chapter 22 of the Session Laws of 1941 applies only to "State institutions, departments, boards, commissions, or bureaus", but makes no reference whatever to private charitable institutions. It is clear, therefor, that said statute has no application to St. John's Orphanage or to any other private charitable institution for which appropriations were made.

It is the opinion of this office, therefor, that disbursements may be made to St. John's Orphanage and the other charitable institutions in accordance with the language of the appropriations made for same without regard to said chapter 22.

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Attorney General