

DEPARTMENT OF PUBLIC
HEALTH AND WELFARE:
LEASE OF FARM LAND
OF CONFEDERATE HOME:

Department of Public Health and Wel-
fare and the Division of Welfare does
not have authority to lease any of
the land constituting a part of the
Confederate Home near Higginsville,
Missouri.

October 9, 1950

Honorable Samuel Marsh
Director, Department of Public
Health and Welfare
State Office Building
Jefferson City, Missouri



Dear Mr. Marsh:

I.

This will acknowledge receipt of your letter of August 28, 1950, requesting an opinion as to a proposed lease to be entered into by your department on behalf of the Confederate Home at Higginsville, Missouri, and also your letter of September 11, 1950, in which you submitted a copy of the proposed lease and additional information.

In this last letter you state:

"The Division of Welfare, which division has direct supervision over the operation of the Confederate Home at Higginsville, would like to lease the farm to a tenant farmer on a share basis, as they have very few inmates there at the present time, and they believe it would be more economical to rent the farm than to operate it with our own personnel.

"We would like your opinion as to whether I, as the incumbent Director of the Department of Public Health and Welfare, and thereby as owner of this farm as trustee for the State, have the power to execute this lease."

(The original copy of the lease is returned to you herewith.)

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II.

The Legislature in 1945 provided as follows:

"The department of public health and welfare through and on behalf of the division of welfare shall have the power; to sue and be sued; to have succession in its corporate name; to make contracts and carry out the duties imposed upon it by this or any other law; to administer, disburse, dispose of and account for funds, commodities, equipment, supplies or services, and any kind of property given, granted, loaned, advanced to or appropriated by the state of Missouri for any of the purposes herein; to administer oaths, issue subpoenas for witnesses, examine such witnesses under oath, and make and keep a record of same.
* * * (See Sec. 33, Laws Mo. 1945, page 954.)

The Supreme Court of Missouri in the case of State ex rel. St. Louis vs. Evans, 139 S.W.2d 967, 246 Mo. 209, held that a lease is a conveyance or grant of an estate in real property for a limited term with conditions attached and said:

"'A lease is generally regarded as a conveyance or grant of an estate in real property for a limited term with conditions attached, and in this connection has been defined as a conveyance to a person for life or years, or at will, in consideration of a return of rent or other recompense, and as a conveyance of any lands or tenements, usually in consideration of rent or other annual recompense, made for life, for years, or at will, but always for a less time than the lessor has in the premises.' 35 C.J., Sec. 381, page 1140.

"Respondents admit that this is a correct definition of a lease, because in their brief they define a lease as follows: 'A contract by which one conveys lands, tenements or hereditaments for life, for a term of years or at will, or for any less interest than that of the lessor, usually for a specified rent or compensation.'"

46 C.J. Sec. 287, page 1032, lays down the following principle and reads:

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"While officers are presumed to have acted within their authority, statutes delegating powers to public officers must be strictly construed, and all persons dealing with public officers must inform themselves as to their authority, and acts which are within the apparent, but in excess of the actual, authority of officers will not bind the government which they represent, unless ratified by it."

The Supreme Court of Indiana in the case of McCaslin et al. v. State, 99 Ind. 428, l.c. 440, states the well established rule of law that a public officer can only deal with property of the state when so authorized by law. The court said:

"* * * A state officer can only deal or contract in relation to the property of the State, when he is authorized so to do by the express provisions of law; and any agreement he may make, or attempt to make, in relation to such property, when he is not so authorized, is void as against the State. * * *"

The Supreme Court of California in the case of McNeil v. Kingsbury, 190 Cal. 406, 213 P. 50, held that where lands are devoted to some special public use by legislative authority, they are not included in general statutes concerning disposal of public lands.

50 C.J. Sec. 583, page 1138, provides:

"The powers and duties of the various land officers and agents of the state, the finality of their decisions and other considerations, are generally fixed by constitutional or statutory provisions, explicitly or implicitly. Officers appointed to sell state lands can dispose of such lands only as are contemplated by the statute providing for such sale. * * *"

59 C.J. Sec. 280, page 167, states the general rule with respect to disposition of state property and reads in part:

"The power to dispose of state property is vested in the legislature which may make provisions therefor by statute, and the statutory provisions must be complied with or the sale will be void."

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Authority for the above statement is found in the case of State of Wisconsin v. Torinus, 26 Minn. 1, 49 N.W. 259, 1.c. 260, wherein the court said:

"The proprietary rights of a state are as absolute and unqualified as those of an individual. It may, in the absence of any self-imposed restrictions in its constitution, sell and dispose of its property upon its own terms and conditions, for cash or upon credit; and it may also take, hold, and enforce notes and obligations received from the purchasers of its property, the same as individuals can. But as the legislative department is the only one that represents the state in respect to such rights, it alone can exercise the power necessary to the enjoyment and protection of those rights, by the enactment of statutes for that purpose."

The above case is cited with approval in the case of Bjurke v. Arens, 281 N.W. (Minn.) 865, 1.c. 869:

"In disposing of such lands the state exercises the same proprietary rights as an individual and may sell and dispose of its property upon such terms, for cash or upon credit, as shall be determined by statute. State of Wisconsin v. Torinus, 26 Minn. 1, 49 N.W. 259; 37 Am. Rep. 395."

And again in the case of Henderson v. City of Shreveport, 160 La. 360, 107 So. 139 1.c. 142, wherein the court said:

"* * *it follows that public things cannot be alienated without the express consent of the sovereign, and hence, of that branch of the government to which has been given the supreme lawmaking power."

In the foregoing cases, it is evident that in order to dispose of state property a legislative act is necessary.

Section 33 of Laws of Missouri, 1945, page 954, quoted at the beginning of this opinion does not give the Department of Public Health and Welfare or the Division of Welfare specific authority to sell or dispose of real estate. We believe that the authority given in that section relates to personal property such as funds, commodities, equipment, supplies and other similar property.

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We believe that the Legislature would have to enact legislation giving your department specific authority to lease the land before a lease would be valid and binding upon all the parties.

III.

CONCLUSION

It is the opinion of this department that the Department of Public Health and Welfare and the Division of Welfare does not have authority to lease any of the land constituting a part of the Confederate Home near Higginsville, Missouri.

Respectfully submitted,

STEPHEN J. MILLETT
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General