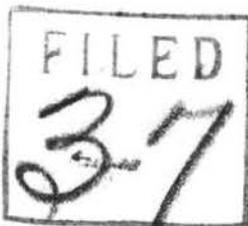


DEPARTMENT OF CORRECTIONS:
STATE:
CONVEYANCE:

Director of Department of Corrections
unauthorized to execute easement to
United States of America.



November 12, 1953

Department of Corrections
Division of Penal Institutions
Jefferson City, Missouri

Attention: Mr. C. R. Hardy, Auditor

Gentlemen:

This will acknowledge receipt of your opinion request
which reads in part:

"On July 17, 1952, the Director of the Department of Corrections, B. M. Casteel, signed an option for an easement with the Federal Government covering 8.58 acres of land known as Stanley Bend Project, Tract A-101-E, for which there was to be paid \$1643.00 to the Division of Penal Institutions or the State of Missouri, and since it is not clear to this office as to the validity of an option signed in this manner on state-owned land, it is respectfully requested that you give a legal opinion on the following: 1. Is an easement option signed by the Director of the Department of Corrections a valid instrument: 2. If payment is made according to the present option what distribution should be made of the funds received?"

You first inquire if the easement option for purchase, a copy of which is attached hereto, is valid. This is merely an option executed by the then Director of the Department of Corrections, State of Missouri, to the United States of America to purchase for a certain consideration a perpetual easement and right of way over a portion of land belonging to the State of Missouri located in Cole County, Missouri and under management of the Department of Corrections, State of Missouri. The purpose for which this easement is sought is for the improvement of the Missouri River at Stanley Bend in the interest of navigation and under said option the Federal Government may purchase the land described therein, may overflow, corrode, remove, cut away and do most anything to said described land for such purposes.

An easement creates an interest in land and automatically is permanent; Wood v. Gregory, 155 S.W. 2d 168, 171, 138 A.L.R. 142; First Trust Company v. Downes, 230 S.W. 2d 770 local cite 775.

It is well established that public officials who are creatures of Statute have only such power as may be granted by the General Assembly and necessary implied authority to carry out that expressed and all persons dealing with such officials do so at their own risk. See Aetna Insurance Company v. Omalley 124 S.W. 2d 1064, local cite 1066, wherein the court said:

"Did the superintendent of insurance have the authority to employ the respondents in these restitution proceedings? Before a state officer can enter into a valid contract he must be given that power either by the Constitution or by the statutes. All persons dealing with such officers are charged with knowledge of the extent of their authority and are bound, at their peril, to ascertain whether the contemplated contract is within the power conferred. Such power must be exercised in manner and form as directed by the Legislature. State v. Bank of the State of Missouri, 45 Mo. 528; State to the Use of Public Schools, etc., v. Crumb, 157 Mo. 545, 57 S.W. 1030; State ex rel. Blakeman v. Hays, 52 Mo. 578; State v. Ferlstein, Tex. Civ. App., 79 S.W. 2d 143; 59 C.J., section 285, page 172, section 286. In the last citation the author says: 'Public officers have and can exercise only such powers as are conferred on them by law, and a state is not bound by contracts made in its behalf by its officers or agents without previous authority conferred by statute or the constitution, unless such authorized contracts have been afterward ratified by the legislature. An agreement not legally binding on the state may, however, impose a moral obligation. The doctrine of estoppel, when invoked against the state, has only a limited application, even when an unauthorized contract on its behalf has been performed, and thereby the state has received a benefit, and so it is held that a state cannot by estoppel become bound by the unauthorized contracts of its officers; nor is a state bound by an implied contract made by a state officer where such officer had no authority to make an express one.'"

In volume 81, Corpus Juris C.J.S., section 107, page 1079, we find the following well established principle of law:

"State property cannot be sold or disposed of except by authority of law, but, in the absence of constitutional limitations, the state, like any individual owner of property, may convey its property in any way it sees fit, and its grant may be express or by necessary implication. The power to dispose of state property is vested in the legislature which may make provision therefor by statute, and may regulate or change at any time the method of disposition; and the statutory provisions must be complied with or the sale will be void."

See State ex rel. Equity Farms v. Hubbard, 280, N.W.9, 203 Minnesota and Bjerke v. Arens, 281 N.W. 865, 203 Minnesota, 501.

In view of the foregoing decisions and fundamental principals of law, we are forced to the conclusion that the Director of the Department of Corrections could only legally execute such an option under a specific statute authorizing him to execute such an easement or conveyance and that the General Assembly of the state is the only body vested with such authority in the absence of legislation granting such authority to some official of the state.

Under section 216.130, R.S.Mo, 1949, the Director of the Department of Corrections is vested with authority to acquire lands by lease or purchase in behalf of the State of Missouri for farming, rock quarries, grazing or other purposes deemed necessary by him to be used for employment at useful work of prisoners at the Penitentiary and for training them so they may earn a livelihood, and further provides if he cannot so acquire necessary land then it authorizes him to direct the Attorney General to condemn said land in the name of the State of Missouri.

We can locate no statute authorizing the director to execute such an option or convey land to the United States of America.

Apparently the officials of the United States of America have questioned the validity of such an instrument and have held up the payment provided therein. Under paragraph 6, page 3 of said option, it provides that the parties therein have agreed that the vendor, notwithstanding said option to purchase, may at its election acquire such interest therein, by condemnation, or other judicial proceedings and further agree that the consideration vested in said option shall be the full amount of award or just consideration for taking of said land. Which, of course, is not binding upon the state in this instance any more than the option contract.

Therefore, in the absence of such statutory authority, the Director of the Department of Corrections exceeded his authority in executing such option, and, therefore such option is of no validity.

In view of the foregoing, we consider it unnecessary at this time to answer your second inquiry.

CONCLUSION

It is the opinion of this department that the then Director of the Department of Corrections had no legal authority to execute such an option and bind the State of Missouri, and therefore same is invalid.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Aubrey R. Hammett, Jr.

Very truly yours,

JOHN M. DALTON
Attorney General

ARH:lw