

ELEEMOSYNARY INSTITUTIONS: Lease for five years is void.

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February 24, 1942

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



Dear Sir:

This department is in receipt of your request for an opinion, which reads as follows:

"Enclosed is a lease made before I became President of the Board. A letter from State Hospital #1, Fulton, says that we lose approximately \$600.00 per year on this farm.

"Is it possible for us to break this lease and, if so, how do we do it?"

The lease accompanying your request provides that the Northwestern Mutual Life Insurance Company leases to George Blowers, State Purchasing Agent for the use and benefit of State Hospital #1, certain properties for a period of five years for cash rent of \$3500.00; said rent to be paid in semi-annual installments of \$350.00 each. The lease was entered into March 1st, 1940, and is to expire February 28, 1945.

Section 9265, R. S. Mo. 1939, provides:

"If the curators, managers, trustees or other officers having control of

any educational, eleemosynary or other public institutions belonging to the state, or any executive committee, by whatever name called, having subordinate control under such curators, managers, trustees or other officers, as aforesaid, or any president, superintendent, steward, or other officer in immediate charge of any such institution, or any person having the business management of any such institution, shall contract, in the name or for the use of such institution, any debt for which there shall not be at the time an adequate appropriation, every such curator, manager, trustee or other officer in control, as aforesaid, and every such committeeman, and every such president, superintendent, steward or other officer in immediate charge, as aforesaid, and any person having the business management of any such institution as aforesaid, shall be personally liable for such debt to the person with whom such is contracted, or the assignee thereof, and, in addition, shall, on conviction, be deemed guilty of a misdemeanor: Provided, that no such curator, manager, trustee or officer in control or committeeman, as aforesaid, shall be so liable, as aforesaid, or be deemed guilty, as aforesaid, if at the time of incurring such debt he shall require the ayes and noes to be taken and recorded on the question of incurring such debt, and shall himself vote against incurring such debt: Provided further, that nothing herein shall prohibit such managers of any such institutions from incurring debts for the necessary support of such institutions from January first of the years the general assembly meets, until the appropriations for such institutions are made, when the funds of such institutions are exhausted."

No debt can be contracted, under the above section, "for which there shall not be at the time an adequate appropriation." It is well settled in this State that an appropriation is for only two years. Article X, Section 19, Constitution of Missouri.

In *Ebert v. Jackson Co.*, 70 S. W. (2d) 918, the Supreme Court had before it a lease for four years entered into by Jackson County. The Constitution provides that no county should be allowed to become indebted in any manner or in any amount exceeding in any year the amount of the income and revenue for such year. In the above case it was stated:

"In the instant case the contract was not executory and contingent. It purports to bind the county to pay plaintiff \$4,320 for the use of the room for four years, beginning August 1, 1925, payable \$90 on the first day of each month, in advance. These payments were to be paid from the income and revenue of future years as well as from the income and revenue provided for the year the contract became effective. It was an unconditional promise made by the county on July 18, 1925, to pay the rent in advance on the first day of each month for four years. The payment of the rent was not contingent upon the occupancy of the room by the justice or on plaintiff's furnishing it to the county for that purpose.

"The contract was an effort to anticipate the income and revenue of the county for several years following the year the contract became effective. It created a debt within the meaning of said section of the Constitution, and is void."

We believe the above ruling is authority in the instant case and that the lease for five years is contracting a debt for which at the time there was not an adequate appropriation and is therefore void.

As to the effect of a void contract, it has been held in Missouri that such a contract may be disregarded by either party. *Metropolitan Paving Co. v. Brown-Crummer Investment Co.* 274 S. W. 815, 309 Mo. 638; *Och v. M.K. & T. R. Co.* 31 S. W. 962, 130 Mo. 27.

As was aptly stated in 12 Am. Jur. 507: "A void contract is no contract at all. It binds no one and is a mere nullity." A void contract need not be rescinded. Lindsay v. Sonora Goldmining Co., 196 S. W. 764.

CONCLUSION.

It is, therefore, the opinion of this department that a lease entered into between an owner of land and a State Hospital for five years, payments to be made semi-annually, is void because Section 9265, R. S. Mo. 1939, provides that no officer of an institution shall contract any debt for which there shall not be at the time an adequate appropriation. Since said lease is void it is further the opinion of this department that it does not have to be rescinded.

Respectfully submitted,

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Assistant Attorney-General

APPROVED:

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ROY MCKITTRICK  
Attorney-General

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