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CANCER HOSPITAL:
CAPACITY TO ACCEPT GIFTS
OR BEQUESTS:

The State Cancer Commission acting on behalf of The Ellis Fischel State Cancer Hospital may accept all such gifts or bequests as are consistent with the purposes for which the hospital was organized.

February 3, 1950

2-8-50

Doctor C. W. Meinershagen
Acting Administrator
The Ellis Fischel State
Cancer Hospital
Columbia, Missouri



Dear Sir:

We have your recent request for an opinion. Your letter is as follows:

"This hospital has, in times past, received money for its construction in which the PWA participated with the State of Missouri and subsequently one gift designated to be used for the purchase of radium and quite recently a bequest from a deceased person's estate.

"I would like to have an interpretation as to the right of the hospital to accept money with specific reference to the last bequest mentioned. It would also be desirable for the hospital to know under what conditions money could be received for specific expenditures as gifts from individuals or estates. This institution is not empowered under the act establishing the hospital passed by the 59th Assembly to receive money except from counties of residence of patients sent in here and then only a maximum of \$5.00 per month per patient. This money, in turn, is forwarded to the State Treasurer and becomes a part of general revenue.

"We would like to be able to accept gifts and to expend the money as the donor designates. I have spoken to Dr. Adams regarding this problem and he asked that I communicate with you for your opinion."

The fundamental question here is whether or not the Cancer Hospital may accept gifts or bequests from private persons. The

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question, "Under what conditions may the hospital accept such gifts?" is secondary, for it is eminently clear that if gifts could be accepted, the conditions of acceptance are limited only to the extent that the purposes of the gifts are inconsistent with the objects for which the hospital was organized.

As stated in Thompson, Wills, 1947, 132, 76, 79, 80:

"* * * a municipal corporation may take a devise or bequest * * * in trust for any purpose germane to the object of its organization."

It is important, but not in any way decisive of the question here, to note that any gifts so offered would have to be accepted by the Cancer Commission, rather than the hospital itself, for the reason that the commission is the body designated to create and govern said institution, consistent of course with the statutory powers and control of the Director of the Department of Public Health and Welfare.

Section 15142, R. S. Mo. 1939, is as follows:

"The governor of the state of Missouri is empowered to appoint with the advice and consent of the state senate a cancer commission for the state of Missouri, consisting of four (4) qualified voters of the state. The cancer commission shall appoint by and with the consent and advice of the governor an administrator to have charge of the operation and conduct of said cancer hospital."

Section 15143, R. S. Mo. 1939, is as follows:

"The cancer commission of the state of Missouri is hereby empowered and directed to establish a hospital to be known as the state cancer hospital."

An examination of the authorities on the primary question - may a public institution, such as the State Cancer Hospital, accept gifts and bequests from private sources, reveals the following:

57 Am. Jur. 143:

"The prevailing American rule is that a

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city may receive a legacy or devise for the purpose of applying the property to a public use consistent with the purposes for which the city is organized. The same has been said to be true of a county, school township, or incorporated school district * * *."

57 Am. Jur. 144:

"* * *The courts favor devises and bequests for charitable uses."

26 Am. Jur. 589:

"Hospitals are regarded as public charities however whether their corporate charter is public or private."

Page 590, supra:

"* * * hospitals * * * may take and hold, by way of grant, devise or bequest real or personal property * * * and may act as trustees if not expressly forbidden by their charter * * *."

In the very recent case of Mississippi Trust Co. v. Ruhland, 222 S. W. (2d) 752, a unanimous court, in holding proper a bequest to the State Federal Soldiers' Home, said as follows, l.c. 752:

"The heirs * * * contend that in the absence of specific legislative authority, it is the policy of Missouri to deny to state institutions the capacity to accept gifts, including testamentary gifts, from private individuals. The trial court, in a well considered opinion, reached the opposite result; and we agree there-
to."

(Underscoring ours.)

The court then continued at page 752:

"Since the statutes of mortmain are not in force in this country, and our wills acts seldom impose restrictions on public corporations taking by will, there is no valid

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reason for denying such corporations the right to receive a legacy or devise in trust for a proper public purpose."

(Underscoring ours.)

In Laws of Missouri, 1947, Vol. I, page 296, Sec. 643, there appears the following section:

"Whenever any devise, bequest, donation, gift or assignment of money, bonds or choses in action, or of any property, real, personal or mixed, shall be made or offered to be made to this State, the Director of Revenue shall be and is hereby authorized to receive and accept the same on such terms, conditions and limitations as may be agreed upon between the grantor, donor or assignor of said property and said official, so that the right and title to such property shall pass to and vest in this State, and all such property so vested in this State and the proceeds thereof when collected may be appropriated for educational purposes, or for such other purposes as the legislature may direct

"Approved March 11, 1947."

It is believed that this section is not applicable to the present situation. Apparently this statute was written to cover those cases where a devise, bequest or gift might be made or offered generally, as "to the State of Missouri." On the other hand, where the gift has been specifically bequeathed to a public board or corporation, such as the State Cancer Hospital, there is no necessity, and in fact it would seem to be a forced interpretation, to apply said section.

Section 643, supra, was altered slightly by the 1947 Act, in that it formerly provided that the Board of Education should be the body authorized to receive gifts made to the state, whereas it now vests that function in the Director of Revenue. This change is not significant here, however.

The court in the Ruhland case, supra, refers to this statute, sets it out, and yet it holds that the Soldiers' Home could accept the bequest, thus substantiating our view that Section 643 does not operate to prevent the acceptance of bequests by such institutions as the Soldiers' Home and the State Cancer Hospital. The court, in the Ruhland case, on page 754, in referring to a statute specifically

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authorizing the Federal Soldiers' Home to accept grants and devises of land stated:

"This amendment, as well as other similar enactments with respect to other state agencies, was in affirmance of the common law, * * * as developed hereinbefore; and, so far as the capacity of the state to accept testamentary gifts is involved, was declaratory thereof and the more clearly established the common law as being in force and effect."

The court concludes the Ruhland case of page 754 of 222 S. W. (2d) by stating:

"What we have said rules the case. However, we also mention, without discussion or passing upon the holding, that the trial court was of the opinion said Laws 1945, p. 1758, if additional authority were needed, was effective to authorize the Federal Soldiers' Home to accept the gift under Rosa Ruhland's will, for the reason said Home is a charitable institution and the rule is well settled that a court will not permit a bequest to such an institution to fail; citing Missouri Historical Society v. Academy of Science, 94 Mo. 459, 466, 8 S.W. 346, 347; Harger v. Barrett, 319 Mo. 633, 642, 5 S.W. 2d 1100, 1104(9); In re Rahn's Estate, 316 Mo. 492, 510 (III), 291 S. W. 120, 127 (5,6) 130 51 A.L.R. 877; Mo. R. S. A. Sec. 9363; Lehnerr v. Feldmann, 110 Kan. 115, 202 P. 624, 625, 627."

In connection with the above we again refer to 26 Am. Jur. 589, which states that hospitals, public or private, are regarded as charitable institutions. The foregoing, particularly the Ruhland case, in controlling here and leads inevitably to the conclusion that the hospital may accept gifts and bequests.

CONCLUSION

It is the opinion of this office that the State Cancer Commission may accept gifts and bequests on behalf of The Ellis Fischel State

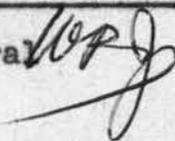
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Cancer Hospital, so long as such gifts or bequests are consistent with the purposes for which said hospital was organized.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
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