

ELEEMOSYNARY BOARD - Validity of contract with member of Board
made prior to appointment to such Board.

8670-56 vs 3 RS 100 1927

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July 26, 1933.

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Honorable W. Ed Jameson,
Chairman - State Eleemosynary Board,
Jefferson City, Missouri.

Dear Sir:

We acknowledge receipt of your letter requesting an
opinion of this office on the following statement:

"On January 23, 1930, W.E. Jameson,
as lessor, made and entered into a
lease contract with State Hospital No.
1 at Fulton, Missouri, by J.J. Corey,
Steward, and approved by Roy H. Monier,
then President of the Eleemosynary Board,
for a term of five years, ending Febru-
ary 28th, 1935, on a certain 160 acre
farm adjoining the State Hospital lands.

Three years of this lease have expired
and the Hospital is in possession of and
using said premises for the current farm
year.

On March 1, 1928, the Callaway Bank at
Fulton, Missouri, as lessor, entered into
a contract with the same parties as lessee,
for a term of three years, ending March 1,
1931, and covering a certain 276 acre
tract near Fulton, Missouri, known as the
Collier farm. This lease, you will notice,
expired in 1931 but has been continued from
year to year, and the said State Hospital
is and has been in continuous possession of
said premises, using and occupying the same
for farm purposes.

With reference to this last named farm, W.E.
Jameson acquired title by foreclosure under
a second mortgage during the year 1932 and
is now the record owner of the same.

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On March 13, 1933, W.E. Jameson, the lessor on the two farms, was appointed by Governor Park as Chairman of the State Eleemosynary Board. So now the said Jameson is in the position of being both the lessor and, as president of the said Board, representing the State as lessee.

I quite naturally want to know the legal status of these matters, both as it affects myself and as to the validity of the leases.

It was deemed essential by the Eleemosynary Board to take term leases on these properties so that the program of development and rotation could be carried out, which could not be done on a one year contract.

When I became Chairman of the Eleemosynary Board, a new farm year had begun under each of the leases as of March 1, 1933.

I beg to enclose a copy of a resolution passed at a meeting of the Eleemosynary Board on April 29, 1933.

This being a matter that affected me personally, I took no part in the said proceedings and was not present when this resolution was adopted.

It is evidently the opinion of the Eleemosynary Board that the use of both of these farms is regarded as indispensable in carrying on the work at Fulton and that both leases were operative and in force before the present Board took office and before the undersigned was made chairman.

I enclose the lease on the 160 acre tract which, as you will observe, does not expire until February 28th, 1935.

I cannot submit a written lease on the 276 acre tract as that lease expired in 1931 and has just been continued from year to year since that time and such lease has never been in my possession.

Will you kindly give me your opinion on this situation, as it affects me as President of the Eleemosynary Board and as to the validity of the leases?"

It is apparent from the foregoing, and from the written statement of Roy H. Monier, former President of the Board, that the agreement for the renting and leasing of these farms was entered into, and was a closed transaction in all respects prior to the date that you became a member of or Chairman of the Board.

The following are the sections of the 1929 Revision which refer to contracts in which members of the Board are interested:

"SEC. 8620. NO MEMBER OF BOARD OR OFFICER OR EMPLOYEES TO BE INTERESTED IN CONTRACT FOR SUPPLIES--PENALTY. If any member of the board of managers **** of the eleemosynary institutions of this state, shall be, directly or indirectly, interested in any contract for any supplies in any quantity or of any kind to be furnished said institution, or any work of any class or kind to be done upon or about any of said institutions or on the property or premises appurtenant thereto, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding two hundred dollars or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment."

"SEC. 8623. OFFICERS OR MEMBERS OF BOARDS MAY BE REMOVED BY THE GOVERNOR, WHEN. If the governor shall become satisfied that any officer **** so appointed by him, is interested in any contract above mentioned **** the governor shall have the power to at once remove said appointee ****".

However, it is apparent that the rental agreements herein referred to are not of the class of subjects referred to in the foregoing sections, the subject of such contracts being supplies and work or services.

As the agreements had been reached prior to the date of your appointment to the Board and were made with the Board, the majority of which was of an opposite political party, we cannot see that your appointment to the Board should affect the validity of the contract, or that such agreements should subject you to the penalties herein referred to.

The foregoing being predicated upon the fact that such agreements are to the best interests of the institution involved,

Hon. W. Ed Jameson

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both as to the suitability of the property involved, the reasonableness of the rental to be paid, and the necessity of the rental of any such property for the most advantageous management of State Hospital No. 1.

We return herewith the lease forwarded for our examination.

Respectfully submitted,

HARRY G. WALTNER, Jr.,
Assistant Attorney General

APPROVED:

Attorney General

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