

RELATING TO POWER AND
AUTHORITY OF BOARD OF
MANAGERS OF ELEEMOSYNARY
INSTITUTIONS ✓

)Holding that the Board of Managers of
)eleemosynary institutions have no
)authority to grant lands or interest in
)same without act of the General Assembly

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October 21, 1933



Mr. R. Ed Jameson,
President Board of Managers,
State Eleemosynary Institutions,
Jefferson City, Missouri

Dear Sir:

We acknowledge receipt of your letter under date
of September 28, 1933, in which you inquire as follows:

"The city of Fulton is endeavoring, with the help of the Federal Government under the Emergency Department of Public Works to construct a sewage disposal plant. It happens that the State of Missouri owns all the property lying east of the city of Fulton. We already have a sewage system with its outlet on state property belonging to Hospital #1. This system has been constructed by the city of Fulton. The School for the Deaf has its own sewage system which empties into the city's system about 1000 feet west of its present outlet.

The State Hospital #1 has its own sewage system that empties into the city's system, about 1000 feet west of its outlet.

The present sewage system takes the entire raw sewage of the city of Fulton and the two state institutions and discharged it, untreated, into a very small stream with intermittent flow. This condition is naturally a very unhealthful one, and construction of an adequate plant has been insisted upon by the State Board of Health for the past five years. In as much as the only available location for a plant of this type to handle the sewage problem of both the city and the state institutions, is on state owned ground,

it will be necessary in our application to the Federal Administration of Public Works to have some easement from the State of Missouri for the use of this ground.

We would like to have a ruling from the office of the Attorney General stating the necessary steps to secure such an easement, and the jurisdiction of the Eleemosynary Board over such matters."

Section 8574, Revised Statutes 1929, reads as follows:

"The board of managers of the eleemosynary institutions shall have the care and control of the property, real and personal, owned by the state and used in connection with the several institutions, and the title to all real estate or personal property now owned by said eleemosynary institutions or by the state for their use or that may hereafter be purchased by, or donated to such institution, shall be vested in the board of managers for the use and benefit of said institution; or in the event of a gift or donation to the use and benefit to either of said institutions as may be designated by the donor. The board of managers of said institutions shall not sell or in any manner dispose of any real estate belonging to either of said institutions without an act of the general assembly authorizing such sale or disposal of such real estate."

Section 7079, Revised Statutes 1929, reads as follows:

"Private property may be taken by cities of the fourth class, for public use, for the purpose of establishing, opening, widening, extending or altering any street, avenue, alley, wharf, creek, river, watercourse, market place, public park, or public square, and for establishing market houses and for any other necessary public purposes."

Section 7090, Revised Statutes 1929, reads as follows:

"Cities of the fourth class shall have the right to condemn lands by the same proceedings aforesaid and pay for the same out of any funds available out of the city treasury without any assessments for benefits, or to advance the amount of damages awarded at the time pending the proceedings and thereupon take possession of the property and to be reimbursed from the benefits assessed when the same are collected."

The question presented by your request is the power and

authority of the Eleemosynary Board to grant to the city of Fulton an easement over property belonging to State Hospital #1?

This question is settled by the plain provisions of Section 8574, supra, which reads as follows:

"Board of managers of said institutions shall not sell or in any manner dispose of any real estate belonging to either of said institutions without an act of the general assembly, authorizing such sale or disposal of such real estate."

Since an easement is an interest in or over lands, it may be acquired either by express grant or by prescriptive right, or right of eminent domain.

(A) EXPRESS GRANT.

The title to all real estate now owned by the eleemosynary institutions or by the State for their use is vested in the board of managers of said institutions and provided under Section 8574, supra, and since said board of managers is denied the right and authority to sell or in any manner dispose of same, without a Legislative act, it is very evident that an easement can not be given by the board of managers to the city of Fulton, with specific act of the General Assembly.

(B) PRESCRIPTIVE RIGHT.

"Although in legal contemplation an easement lies only in grant, yet evidence to establish it is not necessarily a deed because an easement may have existed for such a length of time, and under such circumstances, that the law will presume a grant. This is what is meant by an easement established by prescription. When the evidence sufficiently shows the use of the privilege for a length of time equal to that prescribed by the Statute of Limitations for acquiring title to land by adverse possession, and that the use was adverse and under a claim of right with the knowledge of the landowner, the right to the easement is established." Anthony v. Building Company, 188 Mo. 1. c. 719-720.

To establish an easement by prescription four essential facts must appear.

- 1st. User for the prescribed period.
- 2d. That the possession was adverse.
- 3d. That it was under a claim of right.
- 4th. Notice to the owner of the user and of its character and of the claim of right.

(C) EMINENT DOMAIN.

That cities of the fourth class have the vested right of eminent domain for any necessary public purpose, there can be no question, as provided under and by sections 7079 and 7090, supra.

The procedure with reference to condemnation proceedings by cities of the fourth class, in taking of private property for necessary public purpose, is found in section 7080 R. S. 1929, and that pertinent here is as follows;

"Whenever the mayor and board of aldermen shall provide by ordinance for
. for the taking of private property
. for necessary public
purpose, and it shall become necessary for
that purpose to take or damage private
property, the mayor and board of aldermen
shall, by ordinance, define the limits within
which private property shall be assessed to
pay for such improvements and the time and
mode of payment of such assessments. The city
shall thereupon apply to the circuit court of
the county in which such city is located, or
the circuit judge of that judicial circuit in
vacation, by petition, setting forth the use
for which said lands is to be taken and dedicated;
the names of the owners of the several lots or
parcels of land ;
a correct description of the parcels of land, etc."

A suit by the city under the above section and others following in Article 8, relating to cities of the fourth class, against the Board of Managers of State Eleemosynary Institutions would result in obtaining right to construct a sewage disposal

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plant upon the lands held by the Board of Managers of State Eleemosynary Institutions for the use of State Hospital #1, with damages to said board, by reason of said improvements to be made by said city, also the benefits to said property.

Now it follows, from what has been said and the provisions of the law relating to this subject, that we must hold that the Board of Managers of Hospital #1 have no authority, independent of a specific act of the General Assembly, to make an express grant to the City of Fulton, of the use of the lands of said State Hospital #1 for a sewage disposal plant.

We do not have before us sufficient facts to pass upon the question of an easement by right of prescription, however this question can be determined from what we have said, by an application of the facts to the law as defined by our Supreme Court in Anthony W. Building Company (Supra).

We further hold that the City of Fulton may, by proper suit, condemn as much of the property held by said Board of Managers as will be necessary for the contemplated improvement and no doubt this method will prove to be the best course to pursue.

Very truly yours,

W. W. Barnes
Assistant Attorney General.

APPROVED:

ATTORNEY GENERAL.