

ELEEMOSYNARY BOARD - Without authority to purchase real estate.
STATE PURCHASING AGENT - To purchase real estate for Eleemosynary Board.

December 16, 1933



Mr. W. Ed Jameson
President, Board of Mgrs.
State Eleemosynary Institutions
Jefferson City, Missouri

Dear Sir:

We have your request of December 4th, 1933 for an opinion upon the following state of facts:

"The Missouri State Sanatorium, Mt. Vernon, has an opportunity to make what I consider a very advantageous and much needed purchase of a small tract of land adjoining its present premises.

Will you please advise as soon as you can do so conveniently whether or not the Eleemosynary Board has the power to make such purchase? The owner thereof desires to close the sale before January 1st, hence the request for early action on your part."

THE AUTHORITY TO PURCHASE REAL ESTATE NEEDED BY THE ELEEMOSYNARY BOARD IS VESTED IN THE STATE PURCHASING AGENT.

We call your attention to the provisions of Section 8568, R. S. Mo. 1929, which reads as follows:

"In case it may become necessary for any eleemosynary institution in this state to take or appropriate any lands

of persons or corporations for the uses of such institution or for the purpose of constructing sewers, and the owners of said property cannot agree with the board of managers of the institution desiring to appropriate such lands, or to construct such sewers, upon the proper compensation to be paid, or in case the owner is incapable of contracting, unknown, or a nonresident of the state, then such property may be taken by said institution, by and through and upon the application of the board of managers of the same, in the same manner that is provided for by law in relation to the appropriation and valuation of lands taken for telegraph, macadamized, graded, plank and railroad purposes."

Section 8574, R. S. Mo. 1929, in part, provides 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; * * *"

The above and foregoing statutory provisions apply to all eleemosynary institutions and are made applicable by Section 8618, R. S. Mo. 1929, which reads as follows:

"So far as applicable, and unless otherwise specially provided by law, the provisions of the foregoing sections of this article shall apply to and govern all the eleemosynary institutions of this state."

However, the legislature, in 1933, Laws 1933, page 410, (S.B. 192) created a state purchasing agent. Section 2 of that act provides:

"He shall negotiate all leases and purchase all lands, except for such departments as derive their power to acquire lands from the Constitution of the State."

It would appear that there is a conflict between the statute originally granting to the Eleemosynary Board the power to purchase real estate, as set out above, and that part of Section 2 of the State Purchasing Act, supra, which takes away the power of the Eleemosynary Board to purchase real estate. As between the two conflicting statutes, Section 14 of the State Purchasing Act provides:

"All acts or parts of acts inconsistent or in conflict with this Act are hereby repealed to the extent of such inconsistency or conflict."

It is, therefore, the opinion of this office that the Eleemosynary Board is without authority to purchase the real estate mentioned in your inquiry, but that the same may be purchased by the state purchasing agent for the Eleemosynary Board.

Respectfully submitted,

FRANKLIN E. REAGAN
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General