

DEEDS:

Condition of deed not broken
by building jail.

COLE COUNTY COURT HOUSE - JAIL:

10-2

September 30, 1935.



Honorable Elliott M. Dampf,
Prosecuting Attorney,
Cole County,
Jefferson City, Missouri.

Dear Sir:

Replying to your letter of recent date which is
as follows:

"Will you please render an opinion
on the following: Land was deeded to
the County for the purpose of con-
structing a Court House on same. In
this deed was a reversionary clause
which stated that the property was to
revert back to the heirs on the condi-
tion that the property was used for a
purpose other than the site for the
County Court House. Would the building
of a county jail adjoining the county
court house cause the property to
revert to the heirs?"

the same being supplemented by a certified copy of the deed
recorded in Book B at page 131 of the Recorder's office of
Cole County, Missouri, it will be noted that the conveyance
from Robert W. Wells to the County of Cole of the property
therein described has a provision in it as follows:

"The said parcel of ground to be added
to lot three hundred & fifty one & to-
gether with said lot 351 to make a site
for a Court house for the several courts
of said County of Cole forever--and it
is herein expressly provided and the
said parcel of ground herein described
is granted to said County upon the
express condition that if the same be

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not appropriated, and used for the purpose aforesaid as herein before expressed, then & in that case the said parcel of ground is to revert to me or my heirs--and I the said Robert W. Wells & my heirs executors & administrators shall, forever warrant & defend said parcel of land subject to the provisions, & limitations & reservations herein expressed, to the said County of Cole, forever."

In the case of *Bolling v. Mayor of Petersburg*, 8 Leigh (8 Va.) 224, the court dealt with a similar situation to the one raised by your inquiry. At page 231, quoting from the opinion, is the following:

"After describing the piece of land conveyed as that whereon now stand the courthouse and jail, the use and purposes are afterwards mentioned in the following language: 'which said piece of land is hereby given, granted and conveyed, in consideration of the said courthouse and jail having been built thereupon, and in consideration also that the said courthouse and jail, and the judiciary proceedings of the said town, shall be continued to be kept and held upon the said premises.' The grantor also covenants with the said mayor, aldermen and commonalty and their successors, and it is expressed to be the true intent and meaning of the parties, that the said corporate body, 'for the use of said town,' shall quietly and peaceably hold and enjoy the said piece of land, 'so long as the judicial proceedings of the said town shall continue to be held thereupon.' Then follows finally a proviso, that 'in case it shall ever so happen that the judicial proceedings of the said town shall be discontinued to be held and kept upon the said piece or acre of land, and shall be removed, and held and continued permanently at some other place, in such case such piece of land to reinvest in the said

Robert Bolling, his heirs and assigns, as though this indenture had never been made.'

"Here then is a conveyance in fee for the use of the town, for the purpose of having the courthouse and jail on the lot conveyed, and that the judicial proceedings may be permanently held there; with a covenant for quiet enjoyment so long as the judicial proceedings are held there, and with one only condition annexed, which is, that whenever the judicial proceedings cease to be held there, and are permanently held at some other place, then the lot shall reinvest in the grantor or his heirs.

"The terms of the conveyance have been complied with; the courthouse and the jail are on the lot, and the judicial proceedings are still held there; the condition is not broken, and the reinvestiture cannot take place.

"But the complaint is that the appellees have applied a portion of the ground to objects inconsistent with the grant: that they have laid it off into building lots, which they have let out to individuals on long leases, and have thereby acquired considerable profit to the corporation, not intended by the grant. This complaint is, I think, entirely without foundation. There appears to be abundance of room, on the acre of land, both for the new tenements and for the courthouse and jail. The judicial proceedings are carried on there with perfect convenience, and the buildings erected do not interfere with the full enjoyment of the rights vested in the people of the town by the grant. They do not complain that they are restricted in the full exercise of their rights. Whilst the condition on which the corporation hold the lot is not broken, they hold complete dominion over it, and may use it in any way that they think best for the use of the town."

In the case of Jackson v. Pike, 9 Cowen (9 N. Y.) 69, a deed had a provision in it

"that the said parties of the first part, as well for and in consideration of accommodating the said parties of the second part with a proper and convenient site for erecting a court house and jail for said county, as for increasing the value of property owned by the said parties of the first part, adjacent to the hereby granted premises, have given, granted," etc.

At page 72 the court says:

"But it is further contended that there was an implied condition in this deed, that the premises should be used for no other purpose but for the erection of a court house and jail. If that be admitted, does it follow that the building a stable upon the lot for the accommodation of the jailer, works a forfeiture of the grant? I think not. The grant must have a reasonable construction. Two acres were not necessary to erect a house upon, less than a hundred feet square. What then becomes of the balance of the two acres? They are no doubt appurtenant to the court house and jail. The jailer must have a place to reside. He must have the usual conveniences for a family, and the necessary out houses; and I should think he might have the use of the other ground for a garden, or any other purpose not inconsistent with the grant. It does not follow that those grounds are to lie waste.

"But, in my judgment, an occupation of the premises in the ordinary mode of occupying village lots, is not inconsistent with the grant."

In the case of City of St. Louis v. Wiggins Ferry Co., 88 Mo. 615, where the provisions of a deed were under discussion, the court says this, l. c. 619:

"The same author says the construction of a deed as to its operation and effect, will, after all, depend less upon artificial rules than upon the application of good sense and sound equity to the subject and spirit of the contract."

There the court was dealing with the legal effect of the violation of an agreement

"that one-half of the wharfage collected annually shall be expended on the wharf north of Cherry street,' etc., the expenditures only to be made on those parts relinquished by the first parties, or to which the city shall otherwise acquire a right for wharf purposes."

It will be observed that the provisions of the deed by which this property is conveyed to Cole County are "to make a site for a court house for the several courts of said County of Cole forever." It would seem that so long as the property therein conveyed is the place whereon stands the court house for the several courts of said county, that the requirements of the grantor are complied with.

The provisions in the deed must be given a reasonable meaning and interpretation and construction. Stripped of all but the naked technical, literal provisions, it may justifiably be said that the grantor intended that only one, two or three court rooms be erected on said property and maintained for the "several courts of said County of Cole forever", but such a view as that would be an unreasonable one.

Jails, in the more modern methods of building, are now a part of the court house and very frequently built in the upper portion thereof. It is for the public welfare and increases the efficiency of the court house that the jail be either built in and as a part of the court house building or in close proximity thereto. There is no provision in said deed stating that if a jail is built on said property, the property shall thereupon, and because of that, revert. As is said in the Virginia case quoted, supra, the purposes of the

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establishment and maintenance on this site of a court house are served, and the fact that there may be some land on the plot deeded which is not required for the maintenance of the court house site does not mean that said extra land may not be used for other reasonable purposes.

CONCLUSION

It is our opinion that the building of a county jail adjoining the county court house and on the property described in the deed recorded in Book B at page 131 of the Recorder's office of Cole County would not be a violation of the terms and reservations contained in said deed, and would not be grounds for the heirs of Robert W. Wells successfully maintaining a suit for the recovery of said property.

Yours very truly,

DRAKE WATSON,
Assistant Attorney General.

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney General.

DW:HR