

SCHOOL FOR DEAF: Board of Managers can lease real estate for C. C. C. location.

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May 14, 1935.



Hon. Truman L. Ingle
Superintendent, Missouri
School for the Deaf.
Fulton, Missouri

Dear Sir:

Your request of May 14, 1935, for an opinion is as follows:

"The matter of leasing a portion of our pasture land to the Federal Government and the State of Missouri has been brought up by army officers in charge of the C. C. C. Camp Placement.

"These officers desire to place a C. C. C. Camp on a portion of our pasture land. The Board of Managers of the school have approved the leasing of this land to the Federal Government and the State of Missouri for a term of one year, with the privilege of extending the lease, provided in the opinion of the Attorney General's office they may do so, under the law.

"Will you, therefore, give me an opinion as to whether or not it is legal for us to sign a lease for this purpose."

Section 9639 R. S. Mo. 1929, provides that the government of the Missouri School for the Deaf at Fulton, Missouri, shall be in a Board of Managers, and reads:

"The government of each of these schools shall be vested in a board of managers, composed of five members, appointed by the governor with the consent of the senate.

The members of said board shall be appointed on or before the first day of February, in the odd numbered years, by twos and threes, as may be required for each of said boards, and they shall hold their office, respectively, for the term of four years, and until their successors are appointed and qualified. After such appointments have been made and have been approved by the senate, the secretary of state shall notify such persons of their appointment."

Section 9705 R. S. Mo. 1929, provides how all property of the Missouri School for the Deaf shall be controlled, and reads as follows:

"The board of managers of each school shall have the care and control of all the property, real and personal, owned by such school, and the title to all real estate or personal property now owned by such school, or by the state for its use, or that may hereafter be purchased by or donated to such school shall be vested in such board of managers of the respective schools, for the use and benefit of the said school. The board of managers of either school shall not sell or in any manner dispose of any real estate belonging to the school without an act of the general assembly authorizing such sale or disposal of such real estate. The boards of managers shall provide their respective schools with an official seal."

The statutory limitations in the above Statutes must be judicially construed before we can determine the power of the Board of Managers to execute the lease in question.

The word "sell" as used in the Statute has a very definite meaning in the Statute as it is used in the sense of passing title by a deed of sale for a consider-

ation. The phrase "sell or in any manner dispose of" or more particular the phrase "dispose of" as used in the Statute may confuse one in determining the right of the Board of Managers to execute the lease in question.

In the case of Speckman v. Meyer 220 S. W. 529, 1. c. 530; 187 Ky. 687, the Supreme Court of Ky. construed the phrase "sell or dispose of" as used in a will and said:

"Passing the question as to the validity of the restraint, and conceding that the prohibition against his power to 'sell or dispose' deprived him of the right to convey by deed or other like instrument any part of this estate during the 15 years, it is contended, and was so held by the lower court, that although William Speckman could not sell or convey during the 15 years by deed or other like instrument, he could dispose of it within that time by a last will.

"Whether he could or not turns on the meaning and effect that should be given to the words 'sell or dispose' in the will of F. H. Speckman. In arriving at the meaning of these words, we should and will be controlled by their common usage, because they have no technical meaning, are in general use in the everyday affairs of life, and are to be found in many instruments dealing with the sale and disposition of property, both real and personal. If the testator had simply prohibited the sale of the property during the 15 years by William Speckman, there would be little trouble in determining that he merely meant to deny him the right to part with the title by selling it, but not the right to dispose of it by will.

"But the testator did not stop with prohibiting the sale; he also forbid the disposal of it by him, and the word 'dispose,' although often used as synonymous with the word 'sell,' has in some cases been given a larger meaning, although we have not found any authority that has construed it in the connection here used as forbidding a disposition by will. The sense, however, in which it is employed is usually to be gathered from the context and the purpose of its use. Its meaning may be restricted or enlarged to carry out the intention of the parties. Accordingly a prohibition upon the power to 'sell or dispose' of might mean that the property should not be sold or mortgaged, or exchanged, or incumbered in any way, while a grant of the right to 'sell or dispose' of might confer authority not only to sell, but to trade, exchange, or mortgage."

CONCLUSION.

We are of the opinion that the government and control of the real estate of the Missouri School for the Deaf at Fulton is vested in the Board of Managers appointed by the Governor, and that said Board has it within its power to lease that portion of the pasture land belonging to the Missouri School for the Deaf to the Federal Government, and the State of Missouri, for the placement of a C. C. C. Camp.

The power to lease is vested in said Board under its general statutory power to govern and control. The Statute prescribing that "The Board of Managers* * * * shall not sell or in any manner dispose of any real estate belonging to the school without an act of the General Assembly authorizing such sale or disposal of such real estate" is not a limitation upon the Board precluding it from executing a valid binding lease in the present case.

Hon. Truman L. Ingle

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May 14, 1935.

From the context of the Statute we are of the opinion that the phrase "dispose of" has a synonymous meaning with the word "sell" as used in the Statute. While the word "sell" means that the Board cannot pass title by a deed of sale for a consideration, the phrase "dispose of" means that the Board cannot pass title by exchange or other methods of passing title other than the common method of sale by deed for a consideration.

The limitations of this Statute were to prevent the Board from passing legal title to the property without legislative authorization, but the Legislature did not intend to restrain the Board from executing a lease and at the same time give them power to govern and control the property.

We are of the opinion that the execution of the lease in question is neither a "sale" or a "disposition of" the property coming within the limitations of Section 9705, supra.

Respectfully submitted

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APPROVED:

ROY McKITTRICK
Attorney General.

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