

REAL ESTATE: Authority of State to sell real estate.

March 12, 1936.

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Mr. John H. Bruner,  
Chief of Police,  
Jefferson City, Mo.

Dear Sir:

We regret that we have taken so long to acknowledge receipt of your request for an official opinion under date of February 7, 1936, as to the proper procedure to pursue to enable the City of Jefferson City, Missouri to obtain a grant or conveyance of State Park, located in Jefferson City, from the State of Missouri.

Upon a careful investigation, we find that State Park, located in Jefferson City, Missouri, better known as "McClung Park", was purchased in the early part of the year 1883 in the name of the Missouri State Penitentiary. The tract consisted of ten acres and was known as the "Wagner Rock Quarry."

59 Corpus Juris, Sec. 276, p. 164, in discussing the rights and powers of a state in respect to its property, says:

"A state has in general the same rights and powers in respect of property as an individual. It may acquire property, real or personal, by conveyance, will or otherwise, and hold or dispose of the same or apply it to any purpose, public or private, as it sees fit. The power of the state in respect of its property rights is vested in the legislature, and the legislature alone can exercise the power necessary to the enjoyment and protection of those rights, by the enactment of statutes for that purpose;

and, where the state has not given its consent to the acquisition of property in a particular way, it is not entitled thus to acquire it. The legislature may, however, ratify the unauthorized act of a state officer in dealing with its property. The possession of state property by the authorized agents and officers of the state is the possession of the state."

And in 59 Corpus Juris, Sec. 280, p. 166, we find the following statement with reference to sales and conveyances by the state of its property:

"State property cannot be sold or disposed of except by authority of law, but, subject to constitutional restrictions, the state, like any individual owner of property, may convey its property in any way it sees fit, and its grant may be express or by necessary implication. The power to dispose of state property is vested in the legislature."

Section 8339, R.S. Mo. 1929 authorizes the State Prison Board to purchase and lease lands, thus:

"Said Board shall, with the approval of the governor, have authority to lease or purchase such lands, suitable for farming, rock quarries or grazing purposes, or for any or all of said purposes, as deemed by said board necessary and proper for said purposes, and to be used by said board for the employment at useful work of the prisoners at said penitentiary, and for training the same that they may on leaving the penitentiary be of good health and character and competent to earn an honest livelihood; on which lands, when purchased as herein provided, said board is authorized to erect such buildings for hospitals, dormitories, reformatories and other structures or improvements as the board may, with the approval of the governor, deem necessary and proper

for the welfare of the prisoners. Such purchase of said lands by said board shall be on behalf of the State of Missouri at such terms as said board may deem fair and reasonable and a deed taken therefor to the State of Missouri; and if said board is unable to purchase such lands by them selected for the purposes aforesaid at a fair and reasonable price, they are hereby empowered and authorized to direct the Attorney General, and the Attorney General is hereby required when so directed, to institute in the name of the State of Missouri proceedings for the condemnation and taking of such lands selected by the said board, and said condemnation proceedings shall be in all things governed and controlled by the laws of this state governing the condemnation of private property for a public use by railroad companies and all the laws and statutes of the state applicable to the condemnation of private property for railroad purposes shall be the law for determining the rights of property of each party to any such proceedings."

The above section discloses that although the Prison Board has the authority, with the approval of the Governor, to purchase and lease lands, yet they are given no express authority to dispose of same. The land thus purchased is state property and the Board takes title to the land merely as an agency of the State for State purposes, as stated by the Court in the case of *Milwaukee v. McGregor*, 121 N.W. (Wis.) 642:

"The fact that the board is made a state agency to take and hold title to property for state purposes does not cut any figure in the matter. The building is not designed to be, in any proper sense, the property of the board, except as representing the State."

From the foregoing, it is evident that it would not avail the City of Jefferson City to enter into negotiations with the State Prison Board, but the former must look to the Legislature if it is to obtain the land at all.

Having determined that the power to dispose of State Park is vested in the Legislature, the question arises - May the latter offer same to Jefferson City by grant? We have seen that a state may dispose of its property in any manner it sees fit, subject to constitutional restrictions, and an examination of Section 46 of Article IV of the Missouri Constitution discloses the following prohibition:

"The General Assembly shall have no power to make any grant, or to authorize the making of any grant of public money or thing of value to any individual, association of individuals, municipal or other corporation whatsoever: Provided, that this shall not be so construed as to prevent the grant of aid in a case of public calamity."

That the granting of State Park to the City of Jefferson City, Missouri would be a grant of a thing of value to a municipal corporation is clearly evident, and therefore we are of the opinion that the General Assembly would have no power to grant State Park to the City of Jefferson City, Missouri.

We are unable to find any constitutional restriction which would prohibit the State from disposing of State Park for a valuable consideration, and hence, we are of the opinion that the procedure to be pursued would be for the City of Jefferson City to ask that the next General Assembly authorize a conveyance of State Park to the City of Jefferson City, Missouri, for a valuable consideration.

Respectfully submitted,

JOHN W. HOFFMAN, Jr.,  
Assistant Attorney General.

APPROVED:

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ROY MCKITTRICK,  
Attorney General.