

EASEMENTS: Board of Managers of Eleemosynary Institutions cannot convey an easement without an act of the General Assembly authorizing same. X

August 31, 1937.

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Hon. W. Ed Jameson, President,  
Board of Managers,  
State Eleemosynary Institutions,  
Jefferson City, Missouri.



Dear Mr. Jameson:

We wish to acknowledge your letter of August 18th, together with enclosure, wherein you state as follows:

"I enclose you herewith letter from M. L. Austin, Industrial Agent for the Frisco Lines, having to do with their side track to the State Sanatorium at Mt. Vernon, in Lawrence County. This side track is maintained for the exclusive use and purposes of that institution.

"It seems that they are asking an easement before agreeing to continuing to keep it in good repair. We get all our coal for that institution over this track.

"I presume this is purely a technical matter about which there will never be any objection and if you can cite me as to how to proceed in the matter I will greatly appreciate it."

Your enclosure reads as follows:

"Your people at Mt. Vernon have been negotiating with us in regard to our taking over the cost of maintaining the

industry's track serving the sanitarium at that point. Our Management is agreeable to assuming this expense but to avoid conflict with the rules of the Interstate Commerce Commission we should acquire title to right of way on which the track lays, also ownership of the material in the track.

"The object of this letter is to inquire whether or not you can arrange to convey to us by easement or some other document the ownership of this track.

"Will be pleased to hear from you at your convenience."

Section 8574, R. S. Mo. 1929, 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; 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."

In the case of Kuhlman v. Stewart, 282 Mo. 108, 221 S. W. 31, l. c. 33, the court in holding that an easement was an interest in land, said:

"An easement, being an interest in land, can be created only by grant  
\* \* \*."

In the case of Jackson v. Parker, 9 Cowen (N. Y.) 73, l. c. 81, the court in holding that real estate was an interest in land, said:

"The term estate is very comprehensive, and signifies the quantity of interest which a person has, from absolute ownership down to naked possession. It is the possession of lands which renders them valuable, and the quantity of interest is determined by the duration and extent of the right of possession. Real estate, therefore, includes every possible interest in lands, except, a mere chattel interest."

In the case of Hoyt v. Hart, 87 Pac. (Calif.) 569, l. c. 572, the court in holding that an easement was real estate, said:

"An easement is real estate; and its possession or title is involved in an action seeking damages for past trespasses upon such easement, where the defendant puts in issue the existence of the easement."

We direct your attention to the Laws of Missouri, Extra Session, 1933-1934, page 151, where the Board of Managers of the Eleemosynary Institutions of the State of Missouri was authorized to convey an easement to the City of Fulton for sewer purposes:

"The Board of Managers of the Eleemosynary Institutions of the State of Missouri is hereby authorized to convey to the City of Fulton an easement for sewer purposes, for the establishment and construction of a sewage disposal

plant and the necessary connection or connections therewith, to be owned by said City, on and over land of the State, title to which has been vested by Section 8574, Revised Statutes of Missouri for 1929, in said Board of Managers of the Eleemosynary Institutions for the use and benefit of State Hospital No. 1. \* \* \*

From the foregoing, we are of the opinion that an easement is real estate within the meaning of Section 8574, R. S. Mo. 1929, supra, and therefore that the Board of Managers of the State of Missouri may not convey an easement without an act of the General Assembly.

Respectfully submitted,

MAX WASSERMAN,  
Assistant Attorney General.

APPROVED:

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J. E. TAYLOR,  
(Acting) Attorney General.

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