

ARMORY: Missouri National Guard may spend armory appropriation on 99-year lease.

---

July 16, 1938

7-16



Honorable Lewis M. Means  
The Adjutant General  
Jefferson City, Missouri

Dear General Means:

We acknowledge your request for an opinion dated June 24, 1938, which request reads as follows:

"In regard to an armory site at Caruthersville, Missouri, a desirable site has been located in that city for the building of an armory; however, this land belongs to the St. Louis-San Francisco Railroad Company, and the only method in which it could be utilized in the building of an armory is on the basis of a 99-year lease, to the State of Missouri, for the use and benefit of the National Guard of Missouri as an Armory.

"An opinion is requested whether or not State money may be expended for the building of an Armory on this basis."

In our opinion addressed to you on January 4, 1938, this department held that it was legal for the State of Missouri to accept the gift of an easement on land from a municipality for the use and benefit of the Missouri National Guard as an Armory, so long as the gift, with its terms, limitations and conditions, be approved by the State Board of Education, as provided in

Laws Mo. 1933, page 252, Section 643. Said section reads as follows:

"Whenever any devise, bequest, donation, gift or assignment of money, bonds or choses in action, or of any property, real, personal or mixed, shall be made or offered to be made to this State, the State Board of Education, as constituted by law, shall be and are hereby authorized to receive and accept the same on such terms, conditions and limitations as may be agreed upon between the grantor, donor, or assignor of said property and said officials constituting said Board, so that the right and title to shall pass to and vest in this State; and all such property so vested in this state and the proceeds thereof when collected, may be appropriated for educational purposes, or for such other purposes as the legislature may direct. The intention of this act is to abolish the commission heretofore created to accept devises, bequests, donations, gifts or assignments of money, bonds or choses in action, or of any property, real, personal or mixed, and to transfer such duties to the state board of education."

In the above law, we see that the State Board of Education has the power to accept the gift of personal property with its terms, limitations and conditions, and by the logic of the aforementioned opinion, we believe this gift of a 99-year lease may be legally made and accepted by the State Board of Education. A 99-year lease is nothing more than personal property (Chattel Real), coming within the purview of the Laws Mo. 1933, supra.

Article XIII, Section 7, Missouri Constitution, provides:

"The General Assembly shall provide for the safe-keeping of the public arms, military records, banners and relics of the State."

5 C. J., page 286, defines "armory" as follows:

"A place where arms and instruments of war are kept."

Section 13874, R. S. Mo. 1929, provides:

"Every organization of the national guard of Missouri shall be provided by the state with such arms, uniforms and equipments, camp and garrison equipage as may be necessary for the proper training and instruction of the force and for the proper performance of duty required by this chapter."

Section 13875, R. S. Mo. 1929, provides in part:

"Every arm, uniform or equipment supplied by or through the state under the provisions of this chapter, or in the fabrication of which the state has furnished a part, shall continue to remain the property of the state. \*\*\* "

In Laws Mo. 1937, page 108, Section 36, we find that the Legislature appropriated \$100,000 to the Missouri National Guard for use in conjunction with funds furnished by the Federal Government or by municipalities or from

other sources, in the building of the State owned armories, at points to be selected by the military council and approved by the Governor.

CONCLUSION

This department is of the opinion that where the State is the legal holder of a 99-year lease for the use and benefit of the Missouri National Guard as an armory, then the above cited appropriation may be expended on said leased land, for the building of an armory, if said site be selected by the military council and approved by the Governor.

The Constitution of Missouri makes it a duty of the Legislature to provide for the safekeeping of the public arms, and an armory is a place where public arms are kept. These public arms are the property of the public of Missouri, and the Missouri National Guard is authorized by Section 13874, supra, to provide camp and garrison equipage as may be necessary to preserve the military property of this State. An armory is reasonably a place of preservation of arms, uniforms and equipments when not in actual use, and it is for this purpose that the Legislature appropriated the \$100,000, supra.

Respectfully submitted

WM. ORR SAWYERS  
Assistant Attorney General

APPROVED:

---

J. E. TAYLOR  
(Acting) Attorney General

WOS:FE