

CONSERVATION COMMISSION:
CONVEYANCE IN TRUST:

Conditions under which Conservation
Commission may become possessed of
lands in Newton County, Missouri,
conveyed in trust to the Izaak Walton
League.

March 28, 1940

Conservation Commission
Jefferson City, Missouri

Attention: Mr. E. A. Mayes

Gentlemen:

This is in reply to yours of recent date where-
in you request an opinion from this department based
upon facts which are as follows:

"Reference is made to your opinion rendered to us on May 5, 1939, in regard to land in Newton County which is owned by the Izaak Walton League of Joplin, Missouri, and which is used for the purpose of rearing fish to be distributed in public waters in Southwest Missouri. It will be recalled that when we asked for the previous opinion in regard to this property, for some years this property had been exempt from taxation because of its public use and value to the fishing resources in public waters in Southwest Missouri. After Newton County had not levied taxes on the property for a number of years, a change in administration occurred and taxes were again levied on the property and the Izaak Walton League of Joplin requested that this property continue to be exempt from taxes because of the public nature of its use. Your opinion of May 5, 1939, provided that even though this property was serving the public at large, it could not be exempt from taxes because it was not actually in public ownership.

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"We are again asked to participate in this situation and I am again enclosing the warranty deed to this property, made on January 30, 1932, which deeds the property to trustees for the Izaak Walton League. Since 1932 a considerable amount of very worthy development work has been done on this property by W. P. A. It is the kind of work which is ordinarily done on publicly owned property and only on publicly owned property. Higher authority than our State W. P. A. officials has determined that this property is not publicly owned and that therefore it was unlawful for this W. P. A. work to have been done on this property, and restitution is demanded of the Izaak Walton League for work done in neighborhood of \$30,000.00.

"I have discussed the matter with W. P. A. officials and also with representatives of the Izaak Walton League. I have also read this warranty deed which provides that under certain conditions this property shall become the property of the State of Missouri. The legal question involved appears to be 'Do these trustees who now have title to this property have the authority, under the law, to deed this property to the State of Missouri or to the City of Joplin or to Newton County in which the property is located, or to Jasper County in which the property is not located?'

"For your information, we would prefer to see the property deeded to one of the local units of government instead of to the State. However, because of the worth-whileness of this property, the work which has been done upon the property, and the fish which have been distributed in public waters as a result of this development, and also because

of the desire on the part of the Izaak Walton League to be serving the public good, we expect to place the property in State ownership and under the jurisdiction of this department in case this appears to be the only feasible solution to this situation.

"In the event it should be necessary for this property to be deeded to the State of Missouri, could we lawfully enter into a long-time lease with the Izaak Walton League, this lease to have no consideration but merely turn the property over to the Izaak Walton League after it is deeded to the State of Missouri, with some provision for its continued use along present lines?

"From the standpoint of administration, it is our opinion that it would be preferable for this property to be deeded to some one of the local units of government. It is of further interest to note that the Joplin Chapter of the Izaak Walton League went to considerable expense in developing this project in addition to the funds which were expended by W. P. A.

"In the event any other solutions to this problem occur to you other than those which we have suggested in this communication, we would appreciate such advice. The principal question appears to be the authority of these trustees to deed this property and in the absence of authority to deed this property, the possible procedure and legality of any automatic reversion of the property to the State as provided in the deed.

"This appears to be something of an acute matter insofar as our State W. P. W. officials are concerned, and therefore an early opinion regarding a feasible solution will be appreciated."

You enclose a warranty deed from Dr. Otto Walter by which he conveys to certain parties as trustees a tract of land in Newton County, Missouri. In this trust agreement, which will be set out hereinafter, it seems that under certain circumstances the Conservation Commission may become possessed of the lands described in said deed. You also state in your request that federal funds, through the W. P. A. expenditures, have been expended on this land and since it is held by the Izaak Walton League, which is not considered a public body, then the League is requested to reimburse the federal department for the moneys so expended. That part of the deed which creates the trust is as follows:

"This conveyance and transfer is made upon the following uses and trusts and to the said Luther McGehee, Frank Holden and F. R. Hodgdon as trustees for the following purposes, to-wit: Upon the execution of these presents, the said Luther McGehee, Frank H. Holden and F. R. Hodgdon being invested hereby with the fee simple title to said real estate, shall at once enter and take possession of said real estate and said Trustee shall hold and administer said real estate in carrying out the present uses and purposes of Joplin Chapter No. 31 of the Izaak Walton League of America, said purposes being propagating and distributing fish and wild game of various kinds and description and further to use said property herein conveyed in any way that will advance the cause of conservation of outdoor resources and

recreation provided that, if the said Joplin Chapter No. 31 of the Izaak Walton League of America should at any time or for any reason abandon its chapter and cease to function as set out above, or should the said chapter cease to exist, the said trustees shall extend the privileges set forth above to any organization succeeding the said Chapter No. 31 of the Izaak Walton League, provided further that such organization so succeeding shall have for its purpose the same objective as now had by the said Chapter No. 31 of the Izaak Walton League.

"If and when a time arrives that the said Chapter of the Izaak Walton League fails to function and if there be no similar organization to succeed the said Chapter of the Izaak Walton League as set out in the above paragraph or if the perpetuation of this trusteeship should fail for any reason, then the title to the land herein described shall be vested in the State of Missouri for the uses of the State Fish and Game Commission or any organization succeeding the present State Fish and Game Commission, it being the intention of the party of the first part that this property shall be perpetually used for the furthering of interest in America's Great Outdoor as set forth in the principles of the Izaak Walton League of America.

"It is the intention of the party of the first part to make this trusteeship permanent and it is hereby provided and the trustees are empowered

as follows: In the event of death, refusal to act or removal from the State of any trustee or trustees, the remaining trustee or trustees shall select some other suitable person or persons to serve in the place or places of such trustee or trustees."

The general rule in construction of trust agreements is that if they are ambiguous then there is no reason for construction. Referring to the provisions of this deed, which set up the trust estate, it seems that the grantor in plain language provided that the trustees will hold this real estate and administer it in carrying out the uses and purposes of the Joplin Chapter No. 31 of the Izaak Walton League. This agreement does contain a provision whereby this land could finally vest in the Conservation Commission, but until the contingencies expressed in that agreement have come about, the lands cannot vest in the State Conservation Commission.

As we view this trust agreement, the only circumstances under which the State Conservation Commission could become possessed of this land would be when the Joplin Chapter No. 31 of the Izaak Walton League of America should abandon its chapter and cease to function, or if it should cease to exist, and in case the trustees extended privileges to any organization succeeding said chapter of the Izaak Walton League, having for its purposes the same as those of said Chapter No. 31 of the Izaak Walton League.

At another part of the agreement the grantor in this conveyance provided that if a time arrives when the Chapter No. 31 of the Izaak Walton League fails to function and if there be no similar organization to succeed that chapter, or if the perpetuation of the trusteeship should fail for any reason, then and in that event only would the title to the land vest in the State of Missouri for the use of the State Game and Fish Commission, or any organization succeeding the present State Game and Fish Commission which would now be the State Conservation Commission.

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The grantor in the deed conveying the land finally expressed his intention to be that the property shall be perpetually used for the furthering of interest in America's great outdoors as set forth in the principles of the Izaak Walton League of America.

As this department views this contract, and the courts would be bound by the provisions of the contract in determining to what uses and purposes the land may be put, it does not seem that these trustees would have authority to deed the property to the State of Missouri or to the City of Joplin or to Newton County or to Jasper County in which the property is located.

CONCLUSION.

From the foregoing it is the opinion of this department that the only circumstances under which the State of Missouri may become possessed of the lands mentioned in the Walter deed, supra, is that when the Izaak Walton League fails to function, and if there is no similar organization to succeed that chapter of the Izaak Walton League, or if the perpetuation of the trusteeship should fail for any reason, then and in that event only could the land vest in the State of Missouri for the uses of the State Game and Fish Commission or any organization succeeded to the State Game and Fish Commission having the same purposes as that body.

Respectfully submitted

TYRE W. BURTON
Assistant Attorney General

APPROVED:

COVELL R. HEWITT
(Acting) Attorney General

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