

STATE PARK BOARD: The State Park Board may repair and maintain Arrow Rock State Park tavern under certain conditions.

February 4, 1942

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Mr. I. T. Bode
Director
State Park Board
Jefferson City, Missouri

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Dear Sir:

This will acknowledge receipt of your letter of January 22, requesting an official opinion which reads as follows:

"We are asked by the State organization of the Daughters of the American Revolution to do some maintenance work on the tavern at Arrow Rock State Park. Enclosed is a copy of the original contract between the State of Missouri and the Daughters of the American Revolution which was entered into at about the time that the tavern was purchased by the State.

"From the standpoint of the State Park System it appears desirable that this old tavern be maintained in a proper manner as a historic landmark.

"The question is, do we have legal authority to maintain this tavern - to repair the roof, plaster, sanitary system and whatnot, which appear to be badly in need of maintenance work?"

Apparently, from the above request, proper care and maintenance are not now being given to Arrow Rock tavern.

It is the writer's understanding that this is not due to lack of interest of the organization of the Daughters of the American Revolution who now have custody of Arrow Rock tavern in compliance with legislative enactment but that said condition is caused by lack of money or funds within said organization which may be used for such expenditures.

The Fifty-second General Assembly enacted a law whereby Arrow Rock tavern was to be purchased by the State of Missouri, providing the owner could furnish the State with an abstract of title showing that the State would get a good title clear of all incumbrances, as shown in Sections 1 and 2, Laws of Missouri, 1923, page 107.

"That the governor be and he is hereby authorized to purchase from the owner thereof, for the state of Missouri the property known as the Arrow Rock Tavern and annex consisting of a sixteen-room brick building and contents, (excepting a few personal pictures and two pieces of tapestry reserved by the owner), including the hotel equipment and numerous relics of great historical value, and other buildings all situated on a tract of land and in the village of Arrow Rock in Saline county, Missouri, having a width of 59 feet in front and 105 feet in the rear by a depth of 210 feet; provided that said property can be secured as it now exists free of encumbrance for the sum of five thousand dollars.

"It shall be the duty of the governor to see that said owner furnishes the state an abstract of title showing that the state gets good title to the property clear of all encumbrances, and upon delivery by the owner of such abstract and the deed making such conveyance and the delivery of such property to the state intact the state auditor shall, at the direction of the governor, draw a warrant on the state treasurer for the said sum of five thousand dollars

payable to the owner."

Apparently this was done, for the State purchased said Arrow Rock tavern. Section 3 of the above act reads as follows:

"Upon the acquisition of said property as provided in section 2, it shall be the duty of the governor to place the same, by contract in the name of the state of Missouri, in the custody of the Missouri Society of Daughters of the American Revolution, (D. A. R.) making such restrictions and provisions therein as in his judgment will be necessary for its preservation and maintenance in its present condition without cost to the state."

In compliance with said provision the then Governor of the State of Missouri entered into a contract with the Missouri Society of Daughters of the American Revolution whereby the Society in a resolution, adopted October 4, 1923, and made a part of said contract hereinabove referred to, agreed to make and pay for the necessary repairs upon said property in order to preserve same in good condition. The contract specifically sets out that the essence of the contract is the preservation and maintenance in its present condition as an historic edifice and repository for relics of the property mentioned and the preservation and maintenance for their historic value of contents thereof, and further provides that the Governor of the State shall be the judge of whether or not the Society complies with said contract. That for any violation of the terms of said contract, upon giving sixty days written notice, the Governor may terminate tenancy of said property by said Society. The contract further provides that whenever it shall appear to the Governor that said property is not being preserved and maintained without cost to the State of Missouri, he may immediately terminate said contract.

It is the writer's opinion that the Fifty-second General Assembly in enacting Section 3, supra, fully intended that the

Society of Daughters of the American Revolution should maintain and keep said property in its then present condition without any cost to the State of Missouri, and that so long as this Society fulfilled its obligation under the contract hereinabove referred to, the State of Missouri was not to interfere or terminate said contract. However, should they fail in their obligation to preserve and maintain said property then the Governor may terminate said contract.

The primary rule of construction of statutes is to ascertain the lawmakers' intent from the words used, if possible, and to put on the language of the legislature, honestly and faithfully, its plain and rational meaning and to promote its object and the manifest purpose of the statute. (Artophone Corp., v. Coale, 133 S. W. (2) 343.) At least by implication the legislature intended such custody to remain in this Society so long as they continued to repair and properly maintain said property. Furthermore, it was the opinion of the then Governor of the State, and others, in entering into said contract that in case the Missouri Society of Daughters of the American Revolution should fail to discharge properly their obligations under said contract that they should no longer have custody of said property. This is evidenced by the very terms of the contract reserving to the Governor the right to terminate said contract upon failure to preserve and maintain the tavern without cost to the State. In the construction of a statute by those charged with the duty of enforcing it, while not binding on the courts, is entitled to weight where the meaning is uncertain. (Automobile Gasoline Co., v. City of St. Louis, 32 S. W. (2) 281.)

Section 15329, R. S. Missouri 1939, authorizes the State Park Board to undertake the necessary repairs and proper maintenance for the improvement and preservation of all state parks.

"The state park board shall have the power to acquire by purchase, eminent domain or otherwise, all property necessary, useful or convenient for the use of said park board or the exercise of its powers hereunder necessary for the recreation of the people of the state of Missouri. In the event the right of eminent domain be exercised, it shall be exercised

in the same manner as now or hereafter provided for the exercise of eminent domain by the state highway commission. Said park board shall have the power to make and promulgate all rules and regulations as it may deem necessary for the proper maintenance, improvement, acquisition and preservation of all state parks. Said park board is hereby authorized to employ such persons or assistants as may be necessary and may fix the compensation of persons thus employed within the amount appropriated therefor by the legislature. All vouchers for the payment of bills or for compensation shall be drawn and approved by the director of state parks and when presented to the state auditor shall be paid out of the funds appropriated for such purposes."

Therefore, since this Society has failed to maintain properly said property, thereby breaching said contract, the State of Missouri still remains the owner of said property and, upon the Governor declaring said contract terminated, the custody of said property shall revert to the State of Missouri. The sole purpose in purchasing said property was to preserve it in its then present condition. Therefore, it is the opinion of this Department that upon the Governor terminating said contract, that under Section 15329, supra, the State Park Board is authorized to make the proper and necessary repairs upon said property.

Respectfully submitted

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APPROVED:

ROY McKITTRICK
Attorney General

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