

INSURANCE:
ARROW ROCK TAVERN:

Construing an act of the General Assembly
and appearing at page 107, Laws of Missouri, 1923,
pertaining to Arrow Rock Tavern.

August 18, 1942

Honorable Forrest C. Donnell
Governor of Missouri
Jefferson City, Missouri



Dear Governor Donnell:

This will acknowledge receipt of your request for
an official opinion under date of August 8, which reads:

"Information has been received by me
to the effect that certain damage was
done by windstorm on April 27, 1942
to the Arrow Rock Tavern, Arrow Rock,
Missouri. It is my understanding that
the State of Missouri and either the
Missouri Society of the D. A. R. or
Missouri Society of D. A. R. are insur-
ed against loss on account of said damage.
It is expected that each of two insurance
companies will issue draft for payment of
its share of the loss which has been oc-
casioned. I am informed that said damage
has been repaired and that certain expense
has been incurred for the repairs.

"Enclosed herewith (to be returned by you
to the undersigned) is copy of document
entitled 'C O N T R A C T' the original
of which (whether dated, or not, I do not
know) I understand was entered into be-
tween the State of Missouri and Missouri
Society of Daughters of the American
Revolution.

"Your opinion is respectfully requested
on the following questions:

I

"Assuming that the drafts expected to be

issued shall be made payable jointly to the order of both the State of Missouri and either the Missouri Society of the D. A. R. or Missouri Society of D. A. R., is it required by law that the money derived from the drafts go into the treasury of the State of Missouri?

II

"If it is not required by law that the money derived from the drafts mentioned in 'I' go into the treasury of the State of Missouri,

"(a) Would it be legal for the money derived from said drafts, in so far as the price of the repairs which are mentioned in the first paragraph of this letter shall consume said money, to be used for the payment of that certain expense incurred for said repairs (or for the payment of so much of said expense as is reasonable), and for the balance, if any, of said money to be paid into the treasury of the State of Missouri?

"(b) If it is legal for the money derived from said drafts, in so far as the price of the repairs which are mentioned in the first paragraph of this letter shall consume said money, to be used for the payment of that certain expense incurred for said repairs (or for the payment of so much of said expense as is reasonable), and for the balance, if any, of said money to be paid into the treasury of the State of Missouri, can any official of the State, and, if so, who, legally bind the State by a consent, in writing, to an agreement that the Missouri Society of the D. A. R. or Missouri Society of D. A. R. shall (1) receive the money derived from said drafts, (2) pay that certain expense incurred for repairs which is mentioned in the first

paragraph of this letter (or pay so much of said expense as is reasonable), and (3) cause the balance, if any, of said money to be paid into the treasury of the State of Missouri?

III

"Assuming that the drafts expected to be issued shall be made payable solely to the order of the Missouri Society of the D. A. R. or Missouri Society of D. A. R., is it required by law that the money derived from the drafts go into the treasury of the State of Missouri?

IV

"If it is not required by law that the money derived from the drafts mentioned in 'III' go into the treasury of the State of Missouri,

"(a) Can any official of the State and, if so, who, legally bind the State by a consent, in writing, to payment being made by the insurance companies to the Missouri Society of the D. A. R. or Missouri Society of D. A. R. of the proceeds of the insurance?

"(b) If an official of the State may legally bind the State by a consent, in writing, to payment being made by the insurance companies to the Missouri Society of the D. A. R. or Missouri Society of D. A. R. of the proceeds of the insurance, would it be legal for the money derived from said drafts to be received by the Missouri Society of the D. A. R. or Missouri Society of D. A. R. in trust to be used, in so far as the price of the repairs which are mentioned in the first paragraph of this letter shall consume said money, to pay that certain expense incurred for said repairs (or to pay so much of said expense as is reasonable) and to pay the balance, if any, of said money into the treasury of the State of Missouri?

The Fifty-second General Assembly enacted a provision authorizing the purchase of said Arrow Rock Tavern and Annex for Five Thousand (\$5000.00) dollars. (Laws of Missouri 1923, page 107. See said act in the Contract.)

Thereafter on the 25th day of August, 1923 the fee owners conveyed to the State of Missouri the Arrow Rock Tavern and Annex, hereinafter described in the Contract, in consideration of Five Thousand (\$5000.00) dollars. Thereafter on the 4th day of October, 1923, at a State conference, the Missouri Society of the Daughters of the American Revolution duly assembled by their constitution and by-laws adopted a resolution hereafter contained in the Contract.

Thereafter, in 1923 the Contract, which the above act requires the Governor to enter into with the Missouri Society of the Daughters of the American Revolution, was executed by the then Governor of the State of Missouri, the Honorable Arthur M. Hyde and Mrs. Paul D. Kitt, the then State Regent of the Missouri Society of the Daughters of the American Revolution. The Contract reads:

"THIS AGREEMENT, made and entered into this day of _____, 1923, by and between the State of Missouri, by and through Arthur M. Hyde, Governor of the State of Missouri, pursuant to authority hereinafter set forth, as party of the first part, and Missouri Society of Daughters of the American Revolution, by and through Mrs. Paul D. Kitt, State Regent, pursuant to authority hereinafter set forth, as party of the second part,

"WITNESSETH THAT:

"WHEREAS, by an Act of the General Assembly of the State of Missouri, approved April 2, 1923, appearing at page 107, Laws of Missouri, 1923, it is provided as follows:

"Section 1. Authorizing purchase of Arrow Rock Tavern and annex, etc.- 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.

"Section 2. State to require good title to property. 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 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.

"Section 3. To be placed in the custody of Missouri Society of Daughters of American Revolution. Upon the acquisition of said property as provided in Sec. 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 there-in as in his judgment will be necessary for its preservation and maintenance in its present condition without cost to the State.

"Section 4, Sum of \$5,000 appropriated. There is hereby appropriated out of the general revenue fund of the state the sum of \$5,000.00 for the purpose of carrying into effect the provisions of this act.

"Approved approved April 2, 1923'.

"AND, WHEREAS, by a general warranty deed, executed on the 25th day of August, 1923, Nettie Morris Dickson and Lester N. Dickson, her husband, and Annie W. Hickerson, a single woman, of the County of Saline, State of Missouri conveyed to the State of Missouri, as authorized by the above and foregoing law, in consideration of the sum of Five Thousand (\$5,000.00) Dollars therein provided, the following described tracts or parcels of land, situated in the County of Saline, in the State of Missouri, to-wit:

"Lot No. 60, and the east half ($\frac{1}{2}$) of Lot No. 59 in the town of Arrow Rock, Missouri, said east half of Lot No. 59 fronting 39 feet on Main Street, said lots being in Block No. 17 in Arrow Rock Mo. Also: A lot or parcel of ground described as follows: Beginning at the northwest corner of the lot known as the Hotel Lot, and running thence south on line of the Arrow Rock Hotel lot, 71 feet & four inches, thence west 20 feet & 3 inches, thence North 71 feet & 4 inches, thence East 20 feet and 3 inches to the place of beginning all being in Lot No. 59 Block 17, in Arrow Rock, Mo., and including all buildings and improvements on said lot, together with the hotel equipment and numerous relics as specified in House Bill No. 511 in Section No. 1 of said Bill, as passed by the General Assembly of Missouri of 1923.

"The above description as to metes and bounds and dimensions conforms to the description of said property as outlined in said section of said bill authorizing the purchase.'

"AND, WHEREAS, the Missouri Society of Daughters of the American Revolution in State conference duly assembled, as provided by their Constitution and By-laws on the 4th day of October, 1923, adopted the following resolutions, to-wit:

"WHEREAS, by act of the General Assembly of the State of Missouri in the Year 1923, the Governor of the State was authorized to purchase the Arrow Rock Tavern at Arrow Rock, Missouri, for the State of Missouri, and to contract with the Missouri Society of Daughters of the American Revolution (D.A.R.) for its maintenance and up-keep: And,

"WHEREAS, such property has been purchased and turned over to our Society under the terms of said Act of the General Assembly; Now, Therefore,

"BE IT RESOLVED by the Missouri Society of Daughters of the American Revolution, in State Conference duly assembled:

I

"That we accept the obligations of the provisions of the law aforesaid, and ratify the contract by our officers with the Governor in taking over such property of the State.

II

"That for the management of said property we hereby create a body to be known as the Board of Managers of the Arrow Rock Tavern, the members of which shall be members of our Society. The membership of said Board of Managers, the method of selection, term of office, and powers and duties being fixed in the following paragraphs of this resolution.

III

"The Board of Managers of the Arrow Rock Tavern, shall consist of eight members, seven of whom shall be appointed by the State Regent of the Missouri Society of Daughters of the American Revolution. Of

the first Board, three shall be appointed for three years, two for two years, and two for one year. The Regent of the Arrow Rock Chapter of said Society (whoever she shall be) shall be the eighth member of said Board, and the Vice-Chairman thereof, The State Regent shall designate who shall be chairman of said Board of Managers, but the Board shall select its Secretary and Treasurer. As the terms of office of the members of the first Board of Managers expire, the then State Regent shall appoint members to serve for the term of three years, so that there shall be three members to be Appointed one year, and two each the succeeding two years.

IV

"Said Board of Managers shall meet at Arrow Rock, at least twice per year, and at such other times and places as may be designated by a call of the Chairman of the said Board. The Board shall have full control of the property for the Society and can fix its own rules and regulations, subject always to change and modifications by the State Conference of the Society.

V

"Said Board shall have power to lease or rent the property, and receive the rents and profits thereof. It shall also make and pay for the necessary repairs upon the property, in order to preserve the same in good condition, but extensive improvements shall be first ordered by the State Conference. It shall also keep the property insured and pay the premiums on the policies, and this expense, and the expense of repairs aforesaid, shall be paid from such funds as the Board has from rents or other sources.

VI

"Said Board shall make accurate report of its management to each annual State Conference, and a copy of such report shall be

sent to the Governor of the State. It shall also furnish to the State Regent a report of each meeting of the Board.

VII

"If said Board is unable to rent or lease the property it shall have power to so run and conduct the same as to make it as nearly self sustaining as possible, and to this end may employ a caretaker or other necessary help. In the management of the property the said Board shall also consult with the Governor, as the representative of the State, under the law providing for the purchase of the property by the State.'

"NOW, THEREFORE, in consideration of the premises aforesaid, and of the mutual covenants herein contained, it is hereby agreed by and between the parties hereto that the party of the first part does hereby place in the custody of the party of the second part, the property hereinabove described, subject to the terms to the terms and conditions, first, of the Act of the Legislature, hereinabove set forth, and second, of the resolution of the State Conference, Missouri Society of Daughters of the American Revolution, hereinabove set forth; and the second part hereby accepts said property and assents to said conditions and all the conditions herein contained.

"IT IS EXPRESSLY UNDERSTOOD AND agreed that the essence of this contract is the preservation and maintenance in its present condition as a historic edifice and repository for historic relics of the property herein mentioned and the preservation and maintenance for their historic value of the contents thereof; and the compliance with said essential requirement shall be a question of fact for determination by the Governor of the State of Missouri at any time such

question may arise.

"IT IS, THEREFORE, understood and agreed that the then Governor of the State of Missouri may at any time terminate the tenancy of said property by the party of the second part under this contract, upon sixty (60) days' written notice, duly served upon the then State Regent or chief executive officer of the Missouri Society of Daughters of the American Revolution, for any violation of the terms of this contract, to be specified in such notice.

"IT IS FURTHER PROVIDED and agreed that whenever it shall appear to the then Governor of the State of Missouri that said property is not being preserved and maintained without cost to the State, he may thereupon terminate this contract immediately. The power of the General Assembly of the State of Missouri, to dispose of the property herein described, by sale or other disposition, is expressly recognized and reserved.

"WITNESS our hands to duplicate parts hereof of the day and year last above written

STATE OF MISSOURI

By /s/ Arthur M. Hyde
Governor

Attest:

/s/ Charles U. Becker
Secretary of State

MISSOURI SOCIETY OF
DAUGHTERS OF THE AMERICAN
REVOLUTION.

By /s/ Mrs. Paul D. Kitt
State Regent.

Attest:

/s/ Mrs. W. Ernest Glenn
State Recording Secretary."

Under this act and Contract the State of Missouri owns said property and the Missouri Society of the Daughters of the American Revolution merely have custody of said property. The Society is obligated to maintain and preserve said property in its present condition without any cost whatsoever to the State of Missouri. The Society may rent or lease said property and is authorized under Section V of the Resolutions and Contract to receive said rental. It further provides that said Society shall keep the property insured and pay the premium on the policies and such expense and the expense of the repairs shall be paid from such funds as the Board may have from rents and other sources.

It is apparent that it was the intention that said insurance should be taken out for the protection of said property from any destruction. However, there is no provision in the contract whatsoever that specifically requires this insurance, if paid, be expended for the repairs or destruction occasioned by windstorm, etc. It would have been an easy matter to have inserted a provision following the request to keep the property insured and pay the premiums, any payments resulting from damage to said property to be used to repair or restore the property to its former status or that it shall be payable to the State of Missouri for such purpose, but this was not done.

In State ex rel Thompson vs. Board of Regents, 305 Mo., 57, a writ of mandamus by the State Treasurer was denied by the court. The writ required the Board of Regents of the Northeast Missouri State Teachers College to turn over to the State Treasurer money received from a fire insurance company on an insurance policy on buildings belonging to the State and destroyed by fire. Under the law the Board of Regents was vested with entire management of the college. The law also required the Superintendent of Public Schools to report all receipts of money from appropriations, incidental fees and all other sources, and the disbursements thereof and for what purposes, and the condition of said College. The Board of Regents from incidental fees paid premiums on fire insurance policies on said buildings. The court held that to pay the money in to the State would merely delay the rebuilding of said structures for the reason it would require another appropriation; that it was apparent the legislature intended such fees were not to be paid into the State Treasurer, also, that such money did not constitute revenue as used in the State Constitution and therefore the money was not required to be paid into the State Treasurer and be appropriated in order for the buildings to be reconstructed. In so holding the court said:

"I. The constitutional provision invoked by relator as the underlying authority for the issuance of this writ is but one of the many restrictions to be found in the Constitution of 1875 concerning the custody and expenditure of the revenue. The moving cause for the incorporation of these restrictions in the Constitution was to put an end to an era of extravagance and waste in the use of the revenue which had prevailed for more than a decade prior thereto- the Constitution of 1865 containing no such limitation as is found in the provision under consideration. This provision, it will be seen from its terms, which are wisely chosen as a limitation upon power, is restricted to 'revenue collected and money received by the State from any source whatsoever.' By revenue, whether its meaning be measured by the general or the legal lexicographer, is meant the current income of the State from whatsoever source derived which is subject to appropriation for public uses. This current income may be derived from various sources as our numerous statutes attest, but no matter from what source derived, if required to be paid into the Treasury, it becomes revenue or state money; its classification as such being dependent upon specific legislative enactment or, as aptly put by the respondent, state money means money the State, in its sovereign capacity, is authorized to receive- the source of its authority being the Legislature. * * * * *

* * * * *

"Sections 11498 and 11500 confer upon the board the entire management of the college, including the right to determine the qualifications of students seeking admission therein.

"Section 11505 requires the president of the board to make an annual report each year to

the Superintendent of Public Schools of all receipts of money from appropriations, incidental fees and all other sources and the disbursements thereof and for what purpose, and the condition of said college. The terms of this section indicate by reasonable implication the power of the board to hold and disburse without covering into the State Treasury the funds here in question. If, as is contended by relator, all moneys received by the board were required to be paid into the State Treasury the only money that could be disbursed by the board and for which it would have to render an account would be that which had been appropriated for the college by the Legislature. The authorized disbursements of the board are not thus limited by the section which includes 'appropriations, incidental fees and moneys received from all other sources.' In addition, the board is required to state the purposes for which these disbursements were made. Certainly it cannot, under any rule of construction, be held that a payment into the State Treasury of incidental fees received by the college is in any sense a disbursement. Even the tyro in the use of our mother tongue, attributes no other meaning to the word than to pay out or expend. A payment into the Treasury, therefore, cannot be so classified, as it simply effects a change in the custodian and the place of deposit of the fund. The correctness of our construction of Section 11505 is further attested by Section 11506 which requires the treasurer of the board to make an itemized statement to the Legislature of the receipts and expenditures of the board showing all disbursements of money received from the State and from other sources. In harmony with the construction given to the foregoing sections in Section 11508, which requires the board at its annual meeting to set apart 'all money derived from incidental or other fees paid by students,' etc., thus clearly recognizing that the college has funds within its control which were never in the State Treasury nor appropriated by the Legislature.

"III. * * * * *
* * * * * Without burdening this opinion with their review, it seems sufficient to say that in none of these statutes, either by express enactment or reasonable implication does it appear that it was within the contemplation or intention of the Legislature that moneys received by the managing boards of educational institutions in the nature of incidental fees should, as a condition precedent to their use by the respective boards, be required to be first paid into the State Treasury and appropriated therefrom by the Legislature. In the absence of a mandatory requirement to that effect no duty is devolved upon such boards to thus dispose of these funds. Their duty in the premises in the presence of that discretion with which the law has clothed them is to expend such funds for the college, and account for same in the manner required by the plain provisions of the governing statutes.

"No reason existing for the exercise of this court's mandatory power under the facts in this case, the writ is denied. * * * * *

Therefore, in answering your first query, in view of the foregoing authority, and that such moneys received from said insurance company for destruction does not constitute revenue as provided in our Constitution, that such money shall not be required to go into the treasury of the State of Missouri but same shall go to the Missouri Society of the Daughters of the American Revolution, of course we are assuming that said insurance policy did not provide to the contrary and further that the Society did pay all premiums upon said policy.

Your second query is practically answered by our conclusion to your first query. It would be legal to use said money to repair and restore said property to its former status. However, any surplus is not, under the law and Constitution hereinabove referred to, required to be placed in the State treasury. In reply to your third query, we have already answered same.

Hon. Forrest C. Donnell

(15)

August 18, 1942

Our opinion relative to your fourth query is that no State official is authorized to bind the State as proposed. Furthermore, we are of the opinion that any necessary repairs to restore said property to its former status should be paid out of the insurance payment which is forthcoming as a result of said damage. We know of no way to force such expenditure from such payment. However, under the Act authorizing the purchase of said Arrow Rock Tavern and Annex and the Contract entered into it leaves no doubt that the Missouri Society of the Daughters of the American Revolution are obligated to pay for such damages.

Respectfully submitted

AUBREY R. HAMMETT, JR.
Assistant Attorney General

APPROVED:

ROY MCKITTRICK
Attorney General of Missouri

ARH:EAW