

CANNONS: State of Missouri has title to German cannons on Capitol grounds captured in first World War.

September 21, 1942

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



Dear Governor Donnell:

Several days ago you requested this office to furnish you with an opinion regarding the title and ownership of the artillery pieces used for ornamental purposes on the Capitol grounds. These artillery pieces are from different wars. From the war with Germany there are five pieces, as follows: one 150 mm. long field rifle gun, one 135 mm. long field gun, one 210 mm. howitzer, one 75 mm. gun, converting to 75 A.A., one 77 mm. gun standard. These five pieces were distributed by the Secretary of War under authority of Section 203, Chapter 3, Title 5, U.S.C.A., which is as follows:

"The Secretary of War is authorized and directed to apportion and distribute pro rata among the several States and Territories, and possessions of the United States and the District of Columbia in corresponding ratio as the total number of men serving in the armed forces of the United States, as hereinafter provided, from each State, Territory, or possession of the United States and the District of Columbia bears to the total number of men so serving from all States, Territories, possessions, and the District of Columbia, all guns and howitzers with their respective carriages, machine guns, and other war devices and trophies suitable for distribution and captured by or surrendered to the armed forces of the United States from the armed forces of Germany

and allied nations, with the exception of such guns, howitzers, carriages, machine guns, and other war devices and trophies as may be required for experimental purposes, or for actual use by the armed forces of the United States; and the further exception of such of the devices aforementioned as may be required for display in national museums, at national homes for disabled volunteer soldiers, or for monumental purposes in Arlington National Cemetery and in other national cemeteries, national parks, and national monuments wheresoever situated."

Section 204 of the same Chapter and Title provides the basis of distribution and Section 205 of that Chapter and Title directs how shipments shall be made, and further provides as follows:

"* * * If the chief executive or the commissioners of any State, Territory, possession, or District, shall not, within one year after notification of the character and quantity of the apportionment, file with the Secretary of War such acceptance and agreement, such apportionment, or any part thereof, shall be sold as surplus property as it then is and where it then is, or shall be destroyed - all as the Secretary of War, in his discretion, shall determine; and like action shall be taken in respect of the rejected portion of any apportionment accepted in part only, and war devices and trophies considered by the Secretary of War as unsuitable for distribution."

This law was enacted in 1924. Section 207 of the same Chapter and Title authorized the Secretary of War to make rules and regulations to carry the Act into effect.

A search of the records in the Adjutant General's office has failed to reveal any formal acceptance by the Governor of these pieces. In all probability if a copy of such acceptance exists it would be in the correspondence files of the Hon. Arthur M. Hyde, who was Governor of the State of Missouri at the time of the enactment of the law. There is, however, a copy of a letter written by F. M. Rumbold, the Adjutant General of Missouri, under date of May 5, 1925, to the Chief of Ordnance, requesting information in regard to the above mentioned pieces of artillery, in which letter it is stated by General Rumbold that he has been designated agent for the Governor and that the pieces have been received and are on the Capitol grounds.

None of the sections of the Federal statutes above referred to has ever been construed by any court.

The word "apportion" is defined by Webster's New International Dictionary as follows:

"To divide and assign in just proportion; to divide and distribute proportionally; to make an apportionment of; portion out; to allot."

The word "distribute" is defined by Webster's New International Dictionary as follows:

"To divide among several or many; to deal out; apportion; allot."

Further, in numerous cases the word "apportion" has been held to mean merely "to divide" and the word "distribute" while having no technical meaning in conveyancing, has also in numerous cases been held to mean "to divide among several", "to deal out." It is a word which is ordinarily used when referring to the dividing and giving out of personal property.

From the foregoing it appears to the writer that the above mentioned pieces of artillery were a gift from the Federal government to the State of Missouri to be accepted by the Governor; that they were properly accepted, although there

is no copy of formal acceptance, and that title to the same is in the State of Missouri and, further, that these pieces of artillery used for ornamental purposes may be dealt with in the same manner and by the same means as other pieces of ornamental personal property on the Capitol grounds are dealt with by the State.

This conclusion is strengthened by the administrative interpretation of the Chief of Ordnance in the letter dated November 11, 1926 and directed to Hon. F. M. Rumbold, Adjutant General of Missouri, treating with other articles which had been sent out under authority of the above mentioned Acts. This letter was a reply to a letter of General Rumbold asking directions about some material which had been shipped to the State of Missouri, which had not been formally ordered or accepted, or, about the Federal government helping to pay freight charges on the same. In the letter C. C. Williams, Major General United States Army, Chief of Ordnance, said:

"I do not like to suggest that German shells be sold as scrap due to their value as souvenirs, but under the law they have passed to the Governors of the various States and if they cannot be distributed under conditions which will pay for their freight, I do not believe there is any bar from the United States government's viewpoint to the States selling them for reimbursement for the freight charges."

As you know, in the absence of construction by courts an administrative construction by the officer authorized to administer an Act is entitled to great weight. And, in further support of the conclusion is the above quoted portion of Section 205, Chapter 3, Title 5, U. S. C. A., supra.

There is also an old brass, or bronze piece which is a souvenir of the Spanish-American War. No record of any kind has so far been found dealing with this piece of artillery. However, in this connection it is desired to call your attention to Section 68, Chapter 5, Title 50, U. S. C. A., which is as follows:

"The Chief of Ordnance is hereby authorized to sell without advertisement for public parks, public buildings, and soldiers' monuments purposes surplus obsolete brass or bronze cannon, carriages, and cannon balls at such prices as he may deem reasonable and just: Provided, That obsolete brass or bronze cannon and their accessories shall not be disposed of for such purposes except as provided for in this section."

As to the Civil War piece and the piece which is said to have been with the Doniphan Expedition in the Mexican War, we have not as yet been able to find any record dealing with its accession.

Respectfully submitted,

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WOJ:CP

APPROVED:

ROY McKITTRICK
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