

STATE FAIR GROUNDS: The State will not lose its title to
State Fair Grounds by reason of
COMMISSIONER OF FEDERAL GOVERNMENT CONDEMNATING THE USE
AGRICULTURE: thereof for military camp.

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Commanding General Army Air Forces
Director for Base Services Buildings and
Grounds Division
1818 H Street N. W.
Washington, D. C.



Attention: Lieutenant J. R. Miller

Dear Sir:

This is in response to your request for a written opinion advising that the State Fair Grounds are available and can be obtained by condemnation suit for military purposes.

In our examination of the titles to some of the lands which are possessed by the State of Missouri for the Missouri State Fair Grounds, we find that a portion of these lands were taken subject to the provisions of a statute which was in effect at that time. That statute is now Section 14155, R. S. Mo. 1939. The portion of the section which pertains to this question is as follows:

" * * * that should the state fail for three consecutive years to hold a fair, the land thus used for state fair purposes shall revert to the parties donating it."

There are 236 acres of land in the State Fair Grounds, 136 acres of which appear to have been conveyed subject to the provisions of the foregoing statute. That being the case, the only way by which the State could be relieved from the provisions of this statute would be for such lands to be condemned by the Secretary of War.

There is no express authority for the State to lease the Fair Grounds to the United States Government, and even

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if there was, we would hesitate to voluntarily do so in view of the condition subsequent attached to the State's title.

Under the terms of 50 U. S. C. A. 171, the Secretary of War is granted certain authority with respect to acquiring lands for military training camps. That section provides in part as follows:

"The Secretary of War may cause proceedings to be instituted in the name of the United States, in any court having jurisdiction of such proceedings for the acquirement by condemnation of any land, temporary use thereof or other interest therein, or right pertaining thereto, needed for the site, location, construction, or prosecution of works for fortifications, coast defenses, military training camps, * * * ; such proceedings to be prosecuted in accordance with the laws relating to suits for the condemnation of property of the States wherein the proceedings may be instituted: * * * And provided further, That when such property is acquired in time of war, or the imminence thereof, upon the filing of the petition for the condemnation of any land, temporary use thereof or other interest therein or right pertaining thereto to be acquired for any of the purposes aforesaid, immediate possession thereof may be taken to the extent of the interest to be acquired and the lands may be occupied and used for military purposes, * * * ."

It will be noted that under this section the Secretary of War is authorized to condemn any land, the "temporary use thereof or other interest therein, or right pertaining thereto." Such a grant without question vests in the Secretary of War authority to acquire by condemnation less than a fee

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title in any lands, it might be necessary to acquire for military training camps. And that would be true even though the statute only authorized him to acquire "lands" by condemnation.

In *Pacific Postal Telegraph-Cable Co. v. Oregon & C. R. Co.*, 163 Fed. 967, l. c. 969, it is said that where a "statute gives authority for taking land, it carries with it by necessary implication the authority to take any less interest or estate in the land in the same way and to like effect as the land itself may be taken."

It is settled that "the fact that the land is owned by a state is no barrier to its condemnation by the United States." *Oklahoma v. Atkinson Co.*, 61 S. Ct. 1050, 1064.

Therefore, under the above statute, it appears that the Secretary of War could file a condemnation suit to condemn the use of the State Fair Grounds at Sedalia, Missouri, for a term of years or period terminating at some date fixed after the close of the war.

In such a suit only the State would be concerned with the compensation to be paid. Because, even assuming that such taking would constitute a breach of the condition subsequent, the conditional interest that the heirs of the original grantor might have would only arise after three years had elapsed from such breach, and thus they would have no compensable interest at the time of the taking by condemnation. Under eminent domain the general rule is that "compensation in general must be paid to the person who owned the property at the time it was taken." (29 C. J. S., p. 1099, Sec. 196.) But the word "owner," in this connection, only includes "any person having an interest in the land, and who sustained loss or damage at the time of the taking." (29 C. J. S., p. 1101, Sec. 196.) *First Reformed Dutch Church v. Crowell*, 206 N. Y. S. 132 (App. Div.), involved an almost identical situation. Certain land had been granted to the church conditioned that the estate of the church was limited to endure "'so long as' a church or meeting-house, devoted to the religious purposes of the plaintiff, was 'kept and used' upon the premises." The court held this to be a limitation on the estate granted causing it to terminate upon a breach of such conditions. The claimed breach was

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that the City of New York condemned the property, and the heirs of the grantor were claiming, on that disuser, the compensation. The court said, l. c. 133:

"It does not follow, however, that the plaintiff must fail in the action. The premises in question did in fact cease to be used for the maintenance of a church thereupon. The disuser, however, was a consequence, not a cause, of a loss of title by the plaintiff. The city of New York, in condemnation proceedings, seized the estate of the plaintiff. It also seized the rights of reverter belonging to the heirs at law of the grantors. The seizure was of the entire title, wherever resident, by a single act of appropriation. There was, therefore, no interval of time between the seizure of the plaintiff's estate and the seizure of the rights of the heirs at law during which there could have been a reverter of title to the heirs because of a church disuser of the premises necessarily consequent upon the seizure. At the moment of appropriation there had been no disuser. At that moment the estate then being enjoyed by the plaintiff might have continued forever. At that moment the rights of the heirs were mere possibilities. These rights possessed no value capable of estimate. All that was valuable was the estate of the plaintiff. Therefore the money paid in by the city of New York should be paid to the plaintiff as for the only thing of value taken."

Applying the principle of that case to the present facts, it appears that the heirs of the grantor would not be entitled to any compensation that might be awarded, and particularly is this so when any reverter, if such would

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occur, would not happen until three years after the taking. It will be noted, however, that the heirs in the Crosswell case were made parties.

Upon a suit being filed, the State, in order to expedite matters, will enter its appearance in said proceedings so that a judgment may be entered that will best protect the rights of the State on such terms and conditions that we may be able to obtain from the court and the United States Government. Upon the filing of such condemnation suit, the nation now being at war, the section above quoted authorizes the Secretary of War to take immediate possession and use the land in question for military purposes. Thus there would be no delay arise from the resort to judicial proceedings. Neither will said judicial proceedings operate to prevent expenditure of Federal funds in converting said Fair Grounds into a military camp.

Such a limitation appears to be contained in 50 U. S. C. A. 175, but due to the exception there made, it would seem the limitation on the use of money is lifted where a condemnation proceeding has been filed and has not yet reached final judgment. That exception is as follows:

"Nothing in this section shall be construed to limit the authority now or hereafter delegated to any officer in exercising the power of eminent domain for or on behalf of the United States, to take title to or possession of or to expend money for or upon any land or interest in land, or to expend money as security for an ultimate award in advance of final judgment in any proceedings to determine just compensation; nor shall this section be construed to preclude any acquiring agency from expending money for the erection of any preliminary and temporary structure upon any land."

As previously pointed out, the State is under considerable handicap in connection with the transposition of

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the State Fair Grounds into a military camp due to the condition subsequent attached to the title of the State to 136 acres of this land. However, we feel that a condemnation suit, as you suggest, will not cause a breach of this condition subsequent so as to constitute a forfeiture of these lands. The reason for this is stated in *Evangelical Church v. Schrieber*, 277 Mo. 113, where the court, in speaking of what constituted a breach of a condition subsequent, said, l. c. 130:

"The law is that where a condition subsequent becomes incapable of performance without fault of the grantee or from any legal obstacle, it cannot defeat the fee granted or cause a reversion to the grantor or his heirs."

See also, 26 C. J. S., Sec. 156b, p. 495.

We are also requested to give assurance that no subsequent change in the State administration will affect the right of possession which the Federal Government may acquire by condemning the State Fair Grounds. As we view the situation, if the Federal Government condemns this land, then its right of possession will be fixed by the judgment of the court. Of course, the State would be bound by the provisions of this judgment and could in no way interfere with the United States' right of possession. 59 C. J., p. 330, Sec. 498.

While under the proceeding as outlined above, the United States would perhaps acquire no political jurisdiction over the State Fair Grounds, yet the rule is that where the United States acquires the right to use land, such use is free from any interference and jurisdiction of the State as would impair its effective use for the purposes for which

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the property was acquired. Ft. Leavenworth R. R. v. Lowe,
114 U. S. 525, 29 L. Ed. 264, 269; United States v. Unzenta,
281 U. S. 138, 74 L. Ed. 761, 773.

Respectfully submitted,

ROY McKITTRICK
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RM:VC