

ARMORIES;
ADJUTANT GENERAL;
AND DEEDS;

Conditions and limitations in deeds reserving control under armories for non-military uses not affected by subsequent law vesting control in the adjutant general.



Approved

January 8, 1953 - 1-9-53

C. H. Engelbrecht
Colonel, AUS (Ret.)
Director of Facilities
Adjutant General's Office
Jefferson City, Missouri

Dear Sir:

This is in reply to your request for an opinion which is as follows:

"A number of the deeds covering sites on which state-owned armories were erected under the WPA Program, and authorized by the 59th and 60th General Assemblies, contain reservations in favor of the local governmental unit or agency providing the site.

"These reservations in some instances, vest the control and management of the building for non military use in the local agency.

"A copy of one such deed, that at Kennett, Missouri, is enclosed and your opinion is requested as to what affect the provisions of Sec. 23.13 (Page 8) of the act approved 9 October 1951, designed as H. B. 133, 66th General Assembly has on the easements and reservations contained in the enclosed deed."

House Bill 133 of the 66th General Assembly is to be found in Laws of Missouri, 1951, and, in particular, Section 33 (13) thereof at page 660, which is as follows:

"He shall have control of all armories that are owned, erected, purchased, leased or provided by the state. The adjutant general, in the name of the state of Missouri, may acquire by purchase and may receive by donation or dedication any

property which may be used for military purposes. For the control and management of armories described in this section, the adjutant general may establish armory boards, the personnel of which shall serve without pay. Such boards, subject to the direction of the adjutant general, shall control, manage and supervise all activities in such armories and may rent such armories to persons or organizations not connected with the organized militia."

The primary and fundamental factor in construction of a statute is the ascertainment of lawmakers' intention. *Turner v. Kansas City*, 191 S.W. (2d) 612, 354 Missouri 857. It is to be noted that the deed which accompanied the request for an opinion provided for certain conditions and limitations. This deed was given under Section 643 R.S. 1929. Reenacted, Laws 1933, p. 251. That section reads as follows:

"Whenever any devise, bequest, donation, gift or assignment of money, bonds or choses in action, or of any property, real, personal or mixed, shall be made or offered to be made to this state, the state board of education, as constituted by law, shall be and are hereby authorized to receive and accept the same on such terms, conditions and limitations as may be agreed upon between the grantor, donor, or assignor of said property and said officials constituting said board, so that the right and title to shall pass to and vest in this state; and all such property so vested in this state and the proceeds thereof when collected, may be appropriated for educational purposes, or for such other purposes as the legislature may direct. The intention of this act is to abolish the commission heretofore created to accept devises, bequests, donations, gifts or assignments of money, bonds or choses in action, or of any property, real, personal or mixed, and to transfer such duties to the state board of education."

Therefore, it is to be seen that the deed to the land upon which the armory was later constructed was accepted by the state on the terms, conditions and limitations set forth in said deed. Since the acquisition and construction

of the armory, these conditions and limitations have been in force and effect. We do not believe that it was the intention of the legislature to remove such terms, conditions or limitations found in such deeds by the enactment of House Bill 133. We believe that the correct construction to be placed on this statute is that the adjutant general has control of armories subject to valid conditions and limitations contained in deeds to the land on which the armories are located. We do not believe that the import of House Bill 133 is to remove those conditions and to grant full control in the adjutant general without regard to the conditions and limitations contained in the deeds conveying the property to the State of Missouri.

CONCLUSION.

Therefore it is the opinion of this department that reservations in deeds vesting control and management of armory buildings for nonmilitary use in a local agency have not been effected by House Bill 133 of the 66th General Assembly providing generally that control and management of armories shall be under the control of the adjutant general.

a
Respectfully submitted,

JOHN R. BATY
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

JRB:sw