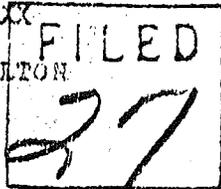


APPROPRIATIONS
FOR LEASE:

A state agency may enforce its option on the renewal of a lease beyond the period for which appropriations are made if new appropriations can be obtained for payment of the rentals for the renewal period.

XXXXXXXXXXXX
JOHN M. DALTON



March 11, 1953

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

XXXXXXX

J. C. Johnson

Dear Colonel Engelbrecht:

We have given careful consideration to your request for an opinion, which request is as follows:

"Enclosed herewith please find copy of a lease between the Central Broom Company of Jefferson City, Missouri, and the State of Missouri, covering a structure in Jefferson City now used as an armory.

"There is also enclosed, copy of a notification signed by both seller and buyer to the effect that said structure had been sold by Central Broom Company to Shryack-Hirst Grocery Company, and the lease assigned the buyer effective 30 September 1952.

"Further, there is enclosed a letter from the Shryack-Hirst Grocery Company wherein the new owner challenges the legality of the renewal clause. Said renewal clause has been used for many years in armory leases (we find no record as to when this form was first adopted) and seemingly the question as to whether this renewal clause is legal has never previously arisen.

"Your opinion is requested as to whether the renewal provision as set forth in Paragraph 5 of enclosed lease is binding upon the owner provided the State gives the required renewal notice."

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The renewal clause of said lease is as follows:

"This lease may, at the option of the State of Missouri, be renewed from year to year at a fixed rental of three thousand dollars (\$3,000.00) per annum and otherwise upon the terms and conditions specified, provided notice be given in writing to the Lessor at least sixty (60) days before this lease or any renewal thereof would otherwise expire: Provided that no renewal thereof shall extend the period of occupancy of the premises beyond the 30th Day of June 1954."

The purchaser of the leased property questions the legality of this clause on the ground that "it does not legally fulfill the full obligation to both parties as there are no funds that can be appropriated for the payment of rent past the biennial ending June 30, 1953."

The Constitution of Missouri places certain restrictions upon the expenditure of public funds.

Section 23 of Article IV is as follows:

"Fiscal year--limitations on appropriations-- specification of amount and purpose.--The fiscal year of the state and all its agencies shall be the twelve months beginning on the first day of July in each year. The general assembly shall make appropriations for one or two fiscal years, and the 63rd General Assembly shall also make appropriations for the six months ending June 30, 1945. Every appropriation law shall distinctly specify the amount and purpose of the appropriation without reference to any other law to fix the amount or purpose."

Section 28 of Article IV is as follows:

"Withdrawals from treasury--limitations on authority to incur obligations--certifications by comptroller and auditor--expiration of appropriations.--No money shall be withdrawn from the state treasury except by warrant drawn in accordance with an appropriation made by law, nor shall any obligation for the payment of money be incurred unless the comptroller certifies it for payment and

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the state auditor certifies that the expenditure is within the purpose of the appropriation and that there is in the appropriation an unencumbered balance sufficient to pay it. At the time of issuance each such certification shall be entered on the general accounting books as an encumbrance on the appropriation. No appropriation shall confer authority to incur an obligation after the termination of the fiscal period to which it relates, and every appropriation shall expire six months after the end of the period for which made."

It seems that the Constitution makes it perfectly clear that the legislature cannot appropriate funds for expenditure beyond the current biennial period, and it has been held that a state agency cannot enter into contract for the expenditure of state funds after the end of said period. *White v. Jones*, 177 S.W. (2d) 603.

The case now under consideration, however, does not belong in this category. The renewal clause of the lease is not a contract already entered into. It is simply an option which may be exercised by the State if appropriations can be obtained in time to permit the State to give notice as required in said renewal clause. The Legislature, now in session, may appropriate funds for payment of the rentals for the year beginning July 1, 1953. The State then could make use of this option by giving notice in writing to the lessor at least sixty days before the lease would otherwise expire.

CONCLUSION

It is the opinion of this office that the renewal clause contained in paragraph 5 of the lease made and entered into on the first day of July, 1951, by and between the Central Broom Company and the Adjutant General for the State of Missouri, is valid and may be enforced on the option of the State if appropriations for the renewal year can be obtained and notice given thereafter to the lessor as required in said renewal clause.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. B. A. Taylor.

Very truly yours,

JOHN M. DALTON
Attorney General

BAT:sw