

ACQUIREMENT OF LANDS
UNDER CONSTITUTION:



The power to acquire land is by the constitution of Missouri conferred upon the State Park Board; upon the Conservation Commission; upon the State Highway Commission for the purposes enumerated in subsection 3 of Section 30 of Article IV of the Constitution of Missouri; and upon any department authorized by the legislature for the purposes enumerated in Section 48 of Article III of the Constitution of Missouri.

November 29, 1954

Honorable Edgar C. Nelson
State Purchasing Agent
Division of Procurement
Jefferson City, Missouri

Dear Sir:

Your recent request for an official opinion reads as follows:

"Section 34.030 of the Missouri Procurement laws reads as follows:

"Shall purchase all supplies and lands -- The purchasing agent shall purchase all supplies for all departments of the state, except as in this chapter otherwise provided. The purchasing agent shall negotiate all leases and purchase all lands, except for such departments as derive their power to acquire lands from the constitution of the state."

"How can I know what departments derive this power from the Constitution?"

"This request for an opinion stems from an inquiry from the Missouri Park Board as to the proper course for the board to pursue in acquiring additional land for one of the present state parks."

The only means whereby this matter may be determined is by an examination of the constitution. Such an examination reveals that by Section 41 of Article IV of the Constitution, the power to acquire land is vested in the Conservation Commission. That section reads:

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"The commission may acquire by purchase, gift, eminent domain, or otherwise, all property necessary, useful or convenient for its purposes, and shall exercise the right of eminent domain as provided by law for the highway commission."

Likewise, Section 47 of Article III of the Constitution confers this power of acquiring land upon the State Park Board. That section reads:

"For fifteen years from the day this Constitution takes effect the general assembly shall appropriate for each year out of the general revenue fund, an amount not less than that produced annually at a tax rate of one cent on each one hundred dollars assessed valuation of the real and tangible personal property taxable by the state, for the exclusive purpose of providing a state park fund to be expended and used by the agency authorized by law to control and supervise state parks, for the purposes of the acquisition, supervision, operation, maintenance, development, control, regulation and restoration of state parks and state park property as may be determined by such agency; and thereafter the general assembly shall appropriate such amounts as may be reasonably necessary for such purposes."

Section 48 of Article III of the Constitution, reads:

"The general assembly may enact laws and make appropriations to preserve and perpetuate memorials of the history of the state by parks, buildings, monuments, statutes, paintings, documents of historical value or by other means, and to preserve places of historic or archaeological interest or scenic beauty, and for such purposes private property or the use thereof may be acquired by gift, purchase, or eminent domain or be subjected to reasonable regulation or control."

The above section confers power upon any department to acquire land for the purposes enumerated above, when the legislature enacts a law to that effect, and such power of acquisition we conceive to be derived from the constitution.

We would also direct attention to subsection 3 of Section 30 of Article IV of the Constitution of Missouri, which reads:

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- "(3) In the discretion of the commission to locate, re-locate, establish, acquire, construct and maintain the following:
- "(a) supplementary state highways and bridges in each county of the state as hereinafter provided;
 - "(b) state highways and bridges in, to and through state parks, public areas and reservations, and state institutions now or hereafter established, and connect the same with the state highways; and also national, state or local parkways, travelways, or tourways, with coordinated facilities;
 - "(c) any tunnel or interstate bridge or part thereof, where necessary to connect the state highways of this state with those of other states;
 - "(d) any highway within the state when necessary to comply with any federal law or requirement which is or shall become a condition to the receipt of federal funds;
 - "(e) any highway in any city or town which is found necessary as a continuation of any state or federal highway, or any connection therewith, into and through such city or town; and
 - "(f) additional state highways, bridges and tunnels, outside the corporate limits of cities having a population in excess of 150,000, either in the congested traffic areas of the state or where needed to facilitate and expedite the movement of through traffic."

The above, we believe, gives the state highway commission the authority to acquire land for the purposes enumerated above, and this power we also conceive to be derived from the constitution.

CONCLUSION

It is the opinion of this department that the power to acquire land is by the Constitution of Missouri conferred upon the state park board; upon the conservation commission; upon the state highway com-

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mission for the purposes enumerated in subsection 3 of Section 30 of Article IV of the Constitution of Missouri; and upon any department authorized by the legislature for the purposes enumerated in Section 48 of Article III of the Constitution of Missouri.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Hugh F. Williamson.

Very truly yours,

HPW/ld

JOHN M. DALTON
Attorney General