

STATE FEDERAL SOLDIERS' HOME: Section 212.120 RSMo 1959 goes to authority to board of trustees of Soldiers' Home of St. James, Missouri sell any portion of land contained in original conveyance to said board of trustees for a site for said institution in 1897, and any sale thereof may not be made without specific legislative authority reflected by statutory enactment.

May 16, 1961



Mr. Marvin H. McDaniel, Superintendent  
State Federal Soldiers' Home of Missouri  
St. James, Missouri

Dear Mr. McDaniel:

This opinion is rendered in reply to your inquiry reading as follows:

"We wish to request an opinion concerning Chapter 212, Soldiers' Home, Missouri Revised Statutes 1959, Section 212.120 Board to hold and convey certain property - limitations.

"Under this section does the Board of Trustees of the State Federal Soldiers' Home have the authority with the approval of the Governor to sell a portion of the institution's land to use these funds from the sale of the land for the re-appropriation for the benefit of the institution."

Supplementing your original inquiry you have informed this office that the land which is the subject of your inquiry "was acquired as part of the original site of the Home in 1897".

Authority of the board of trustees of the Federal Soldiers' Home at St. James to take, hold and convey property is found in the following language from Section 212.120 RSMo 1959:

"The board of trustees may receive any grant or devise of land, or any gift or bequest of money or other personal property to the Federal Soldiers' Home, at St. James, as an endowment of the Federal Soldiers' Home at St. James, thereby vesting title to any such property in the state

Mr. Marvin H. McDaniel

of Missouri for the sole use and benefit of the home. The board of trustees may sell, convey, or otherwise convert into money any such property for the use and benefit of the home, however, any such sale, conveyance or conversion shall be first approved by the governor of the state of Missouri."

The language of Section 212.120 RSMo 1959 clearly discloses that the grants or devises of land, or any gifts, or bequests of money or other personal property, which the board of trustees is authorized to receive, are to be received "as an endowment". The power given to convert any such endowment into money by sale and conveyance must necessarily be restricted to that which was received as an endowment. If this restrictive view of the language is not taken we necessarily enlarge the statute so as to make possible the extinguishment of the original site of the home which was acquired by purchase and not by gift or donation. In *Mississippi Valley Trust Co. v. Ruhland*, 359 Mo. 616, l.c. 621, 222 S.W. 2d 750, we find this brief language disclosing how the original site for the Federal Soldiers' Home at St. James was acquired:

"By an Act approved March 1, 1897 (Laws 1897, pp. 28-30, §§ 1-6, now §§ 15136-15141), the appointment of a Board of Trustees was authorized for the establishment and maintenance of a home for Federal soldiers and sailors and army nurses, and the aged wives of such soldiers and sailors (§1); and said Board of Trustees was authorized 'to receive for a nominal consideration' from 'Woman's Relief Corps Soldiers' Home' a conveyance of the property known as the Soldiers' Home at St. James, Missouri, 'vesting the title to said property in the State of Missouri' (§3)."

It is also significant that the power to convey or dispose of property now vested in the board of trustees under Section 212.120 RSMo 1959, was not placed in the statute until its amendment in 1945 (A.L. 1945 p. 1758), and the grant of such power is in no way germane to the original grant. The purpose of the 1945 amendment to what is now Section 212.120 RSMo 1959,

Mr. Marvin H. McDaniel

is reflected in the following language from Mississippi Valley Trust Co. v. Ruhland, supra, l.c. 359 Mo. 623, 624:

"In connection with the receipt of said gift and the sale of the interest of said Home in real estate constituting a part thereof, the office of the Attorney General of Missouri was of the opinion the Board of Trustees of said Home did not have legal capacity to accept said testamentary gift and dispose of said interest in said real estate, and recommended the passage of legislation vesting designated officials with such authority. Thereafter, § 15138, supra, was amended (Laws 1945, p. 1758) and said Board of Trustees was expressly 'authorized and directed to receive any grant or devise of land, or any gift or bequest of money or other personal property to the Federal Soldiers' Home, at St. James, Missouri, as an endowment of the said Federal Soldiers' Home, at St. James, Missouri, thereby vesting title to any such property in the State of Missouri for the sole use and benefit of said Home.' This amendment, as well as other similar enactments with respect to other State agencies, was in affirmance of the common law, as developed hereinbefore; and so far as the capacity of the State to accept testamentary gifts is involved, was declaratory thereof and the more clearly established the common law as being in force and effect."

In the absence of legislative authorization the property in question, being a part of the original site for the Federal Soldiers' Home at St. James, Missouri, may not be sold under the rule reflected in the following language from 81 C.J.S., States, Section 107:

"The power to dispose of state property is vested in the legislature which may make provision therefor by statute, and may regulate or change at any time the

Mr. Marvin H. McDaniel

method of disposition; and the statutory provisions must be complied with or the sale will be void."

CONCLUSION

It is the opinion of this office that Section 212.120 RSMo 1959 does not grant authority to the board of trustees of the Federal Soldiers' Home at St. James, Missouri to sell any portion of land contained in the original conveyance to said board of trustees for a site for said institution in 1897, and any sale thereof may not be made without specific legislative authority reflected by statutory enactment.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Julian L. O'Malley.

Very truly yours,

THOMAS F. EAGLETON  
Attorney General

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