

Municipality
OFFICERS: City officials do not violate Section 4483, R.S. 1939, by leasing land to the University of Missouri, for experimental purposes, for a nominal consideration.

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October 23, 1947

Honorable C. D. Gray
City Attorney
Campbell, Missouri

Dear Sir:

This is in reply to your letter of October 11, 1947, in which you requested an opinion, and reading, in part, as follows:

"The Federal Government, through the War Assets Administration, and Civil Aeronautics Administration, has ceded and granted to the City of Campbell, a Municipal Corporation, 355 acres of farm land, situated about 2½ miles from the city, which the Federal Government acquired, and used as an auxiliary airfield during the war. The city is to maintain two runways across said land for the public use of any and all airplanes desiring to land or take off from said field. The city is to have the use and the right to occupy and control all of the balance of the acreage, for any purpose it desires, not inconsistent with the provisions of said grant, that is to say, no manufacturing or industrial business shall be carried on and established which might interfere with the government's use of the land at some future time, * * *

* * * * *

"Because of the foregoing reasons, practically all of the business, industrial and mercantile men of the City of Campbell are in favor of the City of Campbell permitting the Missouri State University to use 50 to 90 acres of the airport land for such experimental purpose, and, believing that the

development of such enterprise in the trade territory of Campbell would in time be of much more benefit to the business interest of Campbell than the cash rent would be from such acreage, if rented out for individual agricultural purposes.

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"I realize that your office is not required to furnish opinions to city officials, but in view of the very large public interest, and the unanimous desire of the business interest of the City of Campbell, I would very much appreciate an opinion from your office, whether or not the city officials would be violating any part of Section 4483, by waiving the rent on that part of the land used by the Missouri State University for experimental purposes, and I thank you ever so much."

We assume that the land was lawfully acquired by the city of Campbell and that your inquiry is directed at the legality of the disposition of the property.

We understand the city of Campbell to be a city of the fourth class, and, as such, comes under the provisions of Chapter 38 of the Revised Statutes, 1939.

The powers and duties of the mayor and board of aldermen are set out in Section 7168, R.S. 1939, as follows:

"The mayor and board of aldermen of each city governed by this article shall have the care, management and control of the city and its finances, and shall have power to enact and ordain any and all ordinances not repugnant to the Constitution and laws of this state, and such as they shall deem expedient for the good government of the city, the preservation of peace and good order, the benefit of trade and commerce and the health of the inhabitants thereof, and such other ordinances, rules and regulations as may

be deemed necessary to carry such powers into effect, and to alter, modify or repeal the same."

This is rather a broad statute, and it would seem that the use contemplated to be made of the land in question would be covered by the provision, "the benefit of trade and commerce."

You mentioned in your letter that the city is to have control of the property not required for runways "for any purpose it desires." Of course, it is necessarily implied that the use would be for a municipal purpose. As we have said above, we feel that such a use of the property would come under the benefit of trade and commerce clause, and therefore would be for a municipal purpose.

Section 7096, R.S. 1939, provides, in part, as follows:

"Any city of the fourth class * * * may purchase, hold, lease, sell or otherwise dispose of any property, real or personal, it now owns or may hereafter acquire;
* * * *"

In view of the language in this section, we suggest that the lease be drawn with a money consideration included, nominal or otherwise. This would bring the transaction within the term, "lease," as used in Section 7096, and would eliminate a necessity for a construction of the phrase, "otherwise dispose of," as used in Section 7096.

Section 4483, R.S. 1939, reads, in part, as follows:

"If any member of any town or city council, or of any county court or commission or body charged with the administration or management of the affairs of any county, or any executive officer or member of any executive department of any city, town or county in this state, or any member of any board or commission charged with the administration or management of any charity or fund of a public nature, by whatever name the same may be called, shall knowingly and without authority of law vote for the appropriation, disposition or disbursement of any money or property belonging to

any such city, town, county, charity or fund, or any subdivision of any such city, town or county, to any use or purpose other than the specific use or purpose for which the same was devised, appropriated and collected, or authorized to be collected by law, or shall knowingly aid, advise or promote the appropriation, disbursement or disposition of any such money or property, for any purpose not directed and warranted by law, and such illegal appropriation, disbursement or disposition be in fact effected, every person so offending against the provisions of this section shall be deemed and taken to have feloniously embezzled and converted to his own use such money or property; * * * *"

We think there is no violation of Section 4483 by the city officials completing the transaction in question, because the use is for one of the purposes for which the property was obtained by the city, namely, "for any purpose it desires."

Conclusion.

It is the opinion of this department that the city officials of Campbell, Missouri, do not violate Section 4483, R.S. 1939, by leasing real property, obtained from the Federal government, "for any purpose it desires," to the University of Missouri to be used as an experimental truck and vegetable farm, and receiving for the use thereof a nominal consideration.

Respectfully submitted,

JOHN R. BATY
Assistant Attorney General

APPROVED:

J. W. TAYLOR
Attorney General

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