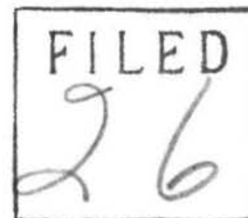
STATE FAIR GROUNDS: Repeal of clause in Section 14155, R. S. Mo. 1939, would not eliminate reverter clause from conveyance by which state acquired title.

February 1, 1945.



Honorable John W. Ellis
Commissioner of Agriculture
State Office Building
Jefferson City, Missouri

Dear Mr. Ellis:

Under date of December 18, 1944, you wrote the office of the Attorney General requesting an opinion as follows:

> "I herewith hand to you a box containing abstracts of title to the State Fair property at Sedalia.
>
> "I respectfully ask that you advise me if there is just cause for the latter part of Section 14155, which reads as follows: '. . and provided further, that should the state fail for three consecutive years to hold a fair, the land thus used for state fair purposes shall revert to the parties donating it.'
>
> "Please advise me further, if from the above mentioned abstracts, or from any other sections, or for any other reason, the above mentioned part of Section 14155 may not be repealed."

The clause of Section 14155, R. S. Mo. 1939, quoted in your letter, was reenacted by the General Assembly in 1909. Prior to that time it was a portion of the original act which authorized the holding of a state fair. This act was enacted by the Fortieth General Assembly in 1899 and was approved April 19, 1899, Laws of Missouri 1899, pages 209, 210, and herein are quoted Sections 6 and 7 of this act, as follows:

"Sec. 6. Within ten days after the passage of this act any town or city easy of access, wishing to compete for the location of this fair, can do so by delivering to the state board of agriculture an agreement signed in writing by not less than fifteen responsible men, to donate to the state of Missouri a tract of land containing not less than one hundred nor more than one hundred and sixty acres, suitable for locating a fair thereon, and the above named board shall examine each and every site so offered, and select the one which, in their judgment, will inure to the best interests of the fair and the state in general: Provided, however, that before such selection shall be made final, there shall be furnished to the state a warranty deed to the said land, and an abstract of the title thereof, which shall be examined by the attorney-general of the state, and when his written opinion that the title to the said land is good and sufficient is received by the board making this selection, the said deed shall be duly recorded and the location made permanent.

"Sec. 7. The state board of agriculture, at such time as may be determined upon by them, shall hold, annually, a fair upon the grounds selected as above provided; and at these fairs all important products of the state shall be recognized, according to merit, by premiums or rewards for excellence offered by the board of directors, out of a fund provided therefor by the legislature of the state at each biennial session thereof, or from funds that may be otherwise provided; but all parties receiving awards from excellence or merit, shall not collect the same, nor is it collectible till he furnishes to the board of directors, to their satisfaction, a complete history of how the exhibit was produced,

> and all other information concerning
> the entry that would be of interest
> or benefit to the general public; and
> provided further, that should the
> state fail for three consecutive years
> to hold a fair, that the said lands
> shall revert to the parties donating
> it: * * * * * * * * * * * * * * * * *"

It is apparent the State of Missouri invited a donation of land upon the conditions set out in the act. Referring to the abstract of title accompanying this request for an opinion, we find that by warranty deed dated September 13, 1899, and after the approval of the act authorizing the holding of a state fair, J. C. Van Riper and wife conveyed to the State of Missouri one hundred thirty-six acres of land in Pettis County, Missouri. The abstract further shows the consideration expressed in this deed to have been "for and in consideration of the sum of One Dollar and the permanent location and maintenance of the State Fair by the State of Missouri on the land hereby conveyed pursuant to the act of the General Assembly establishing a State Fair."

Obviously, this conveyance was made in accordance with the invitation of the General Assembly for a donation of land upon which to hold the state fair. This being true, the reason for the retention in Section 14155, R. S. Mo. 1939, of the clause quoted in your letter, is obvious.

Under this deed the State of Missouri has been in possession of the land, using it as a fair grounds and holding an annual fair thereon for more than forty years.

As a reason for the retention of the clause quoted has been shown, it is necessary to consider your second question. Ordinarily, any law which has been enacted by one Legislature may be repealed by a succeeding Legislature. But in the situation here under consideration it is possible the provisions of Section 15, Article II of the Constitution of Missouri would be applicable to any act attempting to repeal this clause. Said Section 15 provides as follows:

> "That no _ex post facto_ law, nor law
> impairing the obligation of con-
> tracts, or retrospective in its
> operation, or making any irrevocable

> grant of special privileges or immunities, can be passed by the General Assembly."

An act is retrospective in operation when it impairs some vested right. McManus v. Park, 287 Mo. 109, 229 S. W. 211. A vested right which cannot be interfered with by retrospective law is one which it is proper for the state to recognize and protect and of which an individual cannot be deprived without injustice. American States Water Co. v. Johnson, 88 Pac. (2d) 770. In order to determine whether or not an act repealing the provisions of Sectión 14155, supra, would be retrospective, it is necessary to consider the effect of the clause in the statute and the deed by which the state took title.

The state invited a donation of land for a specific purpose. In the case of Chouteau et al. v. City of St. Louis, et al., 56 S. W. (2d) 1050, "donation" is defined as an act by which the owner of a thing voluntarily transfers the title and the possession of the same without any consideration.

Under this definition, if it were not for the proviso in Section 7, House Bill 279, Laws of 1899, supra, and the language of the consideration expressed in the deed, we would have no question to determine. The deed would have effected an unqualified donation of absolute fee simple title to the state. Under the situation existing, however, it becomes necessary to determine whether we have a conveyance of absolute fee simple title, title with a limitation or a title upon a condition subsequent. No authority is needed for the statement that absolute fee simple title is full title without limitations or condition, but for definitions of title with limitations, which are sometimes called determinable fee, and title upon condition subsequent, we refer to Washburn on Real Property, 6th Ed., Vol. 1, page 79. This work defines an estate with limitations as one which terminates ipso facto upon the happening of the event by which it is terminated, and an estate upon a condition subsequent as one which does not terminate ipso facto but which only terminates upon the entry and taking possession by the party entitled to avail himself of the breach of the condition.

Turning to the deed to the state, we find that the deed itself does not contain either a reversion clause or

a condition subsequent but refers to the law authorizing the holding of the state fair, which law is hereinbefore set out. When a deed makes reference to some other instrument, the other instrument referred to must be read into the provisions of the deed. Corpus Juris, Vol. 18, Par. 229, page 268. Also we refer to the case of Waldermeyer v. Loebig, 121 S. W. 75 (Mo. Sup.) from which the following is quoted at l. c. 78:

> "Again and again it has been ruled by this court that a deed must be read as a whole--in a word, by its four corners--and that many of the old formulas were no longer invoked by the courts. All rules of construction rest upon the principle that they were designed to ascertain the intention of the grantor and effectuate it, unless some positive rule of law would be infringed by so doing. Thus, in the recent case of Stoepler v. Silberberg (Mo.) 119 S. W., loc. cit. 421, in discussing the effect of these statutory words in a deed, it was said: 'But while these covenants are expressed in the deed, the instrument must be read and construed in the light of all its parts, and, when this is done, it is obvious that it does not attempt or purport to convey and warrant the lot itself, but only "all such right, title and interest" that Frederick Stoepler had in and to said house and lot,' etc. To the same effect is Butcher v. Rogers, 60 Mo. 138; Moore v. Harris, 91 Mo. 616, 4 S. W. 439. In Allen v. Holton, 20 Pick. (Mass.) 463, it was said: 'Every deed is to be construed according to the intention of the parties as manifested by the entire instrument, although it may not comport with the language of a particular part of it. Thus a recital or a preamble in a deed may qualify the generality of the words of a covenant or other parts of a deed.' It is familiar law that when one deed or instrument refers to another, the instrument or deed referred to becomes

> thereby part and parcel of the former instrument. To all intents the two become one when we seek to find their meaning and intention. * * *"

Reading the deed and the statute together we find that the estate granted was limited to revert to the donors if the state fails for three years to hold a fair upon the property donated.

In the case of Chouteau v. City of St. Louis et al., decided by the Supreme Court, in Banc, 55 S. W. (2d) 299, l. c. 302, is an excellent discussion of a condition subsequent in a deed, which is here quoted:

> "'While a condition subsequent may be inserted in a conveyance of lands in fee without using express terms of reverter upon the breach of such condition, if the deed in its entirety and the circumstances attending its execution demonstrate that the object of the grantors was to cause a reversion of the estate upon the subsequent happening of a lawful condition, yet no such conclusion will be drawn, if it may be avoided by any other reasonable construction of the language of the deed. This is the settled policy of the law, the reason of which is that estates once vested in fee ought not be uprooted, except upon proof of the happening of a lawful condition attached to the continuance of the estate by the terms of the deed, and further proof that it was the intention of the grantor in making the conveyance that it should revert when this condition ceased to exist.'
>
> "To the same effect, German, etc., Church v. Schreiber et al., 277 Mo. 113, loc. cit. 127, 209 S. W. 914.
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> "In an effort to bring himself within the rule, plaintiff contends that a right of re-entry should be implied from the expressed condition in the deed and the circumstances surrounding the execution of the deed. He points to no circumstance

> tending to show an intention on the part of the grantors to provide for re-entry. On the contrary, the circumstances tend to show that the grantors intended to convey the fee. They were dealing with the state under a statute, the terms of which called for a conveyance of the fee. The statement in the statute that the land donated would be used as a site whereon to erect a courthouse did not limit the estate to be conveyed. It was merely a declaration that the land donated would be used for county purposes. As stated, the grantors owned the lots surrounding the land donated. The location of the courthouse on said land would enhance the value of those lots. In the absence of authority under the statute to convey a determinable fee, or a fee on condition subsequent, the grantors imposed a confidence or trust on the land by the condition set forth in the deed. That confidence was not wholly misplaced for the courthouse was located on said land for a century. Plaintiff cites cases in which a deed or lease provided for a forfeiture. Of course, the right of re-entry is implied from a provision for forfeiture. The deed under consideration contained no such provision."

While this quotation points out the rule where there is no reversion clause, the converse of the rule is true where the deed does contain a reversion clause, as is indicated in the paragraph quoted, and as we have in a deed and statute which we are considering.

Therefore, applying the foregoing rules, the title to the one hundred thirty-six acres of land in Pettis County, conveyed by J. C. Van Riper to the state by the deed herein referred to, would revert to the donors or their heirs upon the failure of the state to hold a fair for three years in accordance with the provisions of Section 14155, supra. This right was vested by the deed and the acceptance by the state,

and an attempt now to repeal the portion of the statute which is read into the deed to make the reverting clause would be a retrospective law and in conflict with the provision of Section 15, Article II of the Constitution of Missouri.

At this point it is considered advisable to mention that if due to the present war emergency the state should fail for three years to hold a fair, there is a slight possibility that a court might excuse such failure in an action to enforce the reversion (Vicksburg and Meridian R. R. Co. vs. Ragsdale, 46 Miss 458), if an action could be maintained against the state for such purpose.

Conclusion

It is the conclusion of this department that there is a valid reason for the retention of the clause in Section 14155, quoted in your letter; that by that clause and the deed by which the state acquired title to the one hundred thirty-six acres of state fair property a valid right of reversion was vested in the donors and their heirs. That portion of the statute quoted could not now be lawfully repealed.

Respectfully submitted,

W. O. JACKSON
Assistant Attorney General

APPROVED:

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HARRY H. KAY
(Acting) Attorney General

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