

PUBLIC BUILDINGS: May be used for meetings of general public interest when such use does not interfere with regular activities.

April 3, 1942

Mr. T. L. Ingle
Board of Managers
Missouri School for the Deaf
Fulton, Missouri



Dear Sir:

This will acknowledge receipt of your request for an opinion from this department, which reads as follows:

"The Board of Managers of the Missouri School for the Deaf at Fulton, Missouri, has been requested to make available the auditorium of that school under the following conditions:

"The Federal Government has been conducting schools for the training of air raid wardens throughout the United States. The Missouri State Council of Defense has sent representatives to certain of those schools to obtain the training in order that it may be passed to the local air raid wardens which may be selected in the various municipalities in the State of Missouri. We have been requested by the State Council of Defense to furnish our auditorium for a period of three days, during which time the local air raid wardens may receive this instruction. We have also been requested to furnish our facilities for several days to the American Legion for the annual event known as 'Boys' State.'

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"The use of our buildings for the above purposes will not interfere in any way with the usual routine at the school, and no expense whatever is involved on the part of the State. The Board is of the opinion that both proposed meetings are of general public interest, and we desire an opinion from your department as to whether this Board has the power to permit the use of the buildings."

All real and personal property of the Missouri School for the Deaf is vested in the Board of Managers of that school by Section 10864, R. S. Mo. 1939, which is as follows:

"The board of managers of each school shall have the care and control of all the property, real and personal, owned by such school, and the title to all real estate or personal property now owned by such school, or by the state for its use, or that may hereafter be purchased by or donated to such school shall be vested in such board of managers of the respective schools, for the use and benefit of the said school. The board of managers of either school shall not sell or in any manner dispose of any real estate belonging to the school without an act of the general assembly authorizing such sale or disposal of such real estate. The boards of managers shall provide their respective schools with an official seal."

The power of the Board appears to be all-inclusive except that it may not sell or dispose of the property, that right being retained by the General Assembly.

We have been unable to find a case in which the right of public officers in control of public buildings belonging to the State to permit the temporary use of such

buildings for public purposes has been questioned, although we have found many cases in which such use of the property was made. We have, therefore, resorted to cases involving the right of public officers in cities or counties to permit the use of public buildings under similar conditions.

In *Meredith v. Fullerton*, a case by the New Hampshire Supreme Court, 139 Atl. 359, 63 A.L.R., 1. c. 619, we find the following:

"A town has the power to let its town hall for private use, for a reasonable period, when such use will not unreasonably interfere with municipal needs. *Curtis v. Portsmouth* (1893) 67 N. H. 506, 508, 39 Atl. 439; *Worden v. New Bedford* (1881) 131 Mass. 23, 24, 41 Am. Rep. 185; 3 Dill. Mun. Corp. 5th ed. sec. 997. The determination of the question as to whether the public requirements permit such letting, as well as the term for which the property may be spared for private use, is vested in the town. *Bates v. Bassett* (1888) 60 Vt. 530, 1 L.R.A. 166, 15 Atl. 200; *French v. Quincy* (1861) 3 Allen (Mass.) 9, 12; *Jones v. Sanford* (1877) 66 Me. 585, 591; *Blood v. Manchester Electric Light Co.* (1895) 68 N. H. 340, 342, 39 Atl. 335."

Under a California statute authorizing counties to erect memorial buildings for the use of patriotic associations such as veteran soldiers, sailors, and marines who had served the United States in any of its wars, the court in *Captain Charles V. Gridley Camp v. Butte County*, 277 Pac. 500, held that there was nothing in the statute excluding the power of the board of supervisors to permit, either free of charge or for a stated consideration, the use of any such building for other purposes, when the same did not interfere with the ordinary use of such building by veterans' organizations.

In 63 A.L.R. 617, we find the general rule as follows:

"Municipal corporations which own municipal buildings, built in good faith and used for municipal purposes, ordinarily have the right to rent or permit such buildings or parts thereof to be used incidentally for other purposes by private persons."
(A long list of authorities is cited.)

In Jackson v. Ball, 211 Ala. 273, 100 So. 327, it was decided that under a statute giving county commissioners control of county property, the commissioners might lease county buildings which were not actually needed for county purposes. The power to make the lease was said to be derived from the use of the word "control" in the powers granted to the commissioners.

In this connection, we wish to point out also the intention of the Legislature under similar circumstances as expressed in Section 10337, R. S. Mo. 1939, under "Laws applicable to all classes of schools." That section is in part as follows:

"The board of directors or board of education shall have the care and keeping of all property belonging to the district, and shall provide the necessary globes, maps, charts, apparatus, supplementary books, and other material for the use of the school.
* * * The board of directors, or board of education, having charge of the schoolhouses, buildings and grounds appurtenant thereto, may allow the free use of such houses, buildings and grounds for the free discussion of public questions or subjects of general public interest, for the meeting of organizations of citizens, and for such other civic, social and educational purposes as will not interfere with the prime purpose to which such houses, buildings and grounds are devoted:

Provided, that at any annual or special meeting the use of the school-house for any of the above purposes may by a majority vote of the qualified voters voting on the proposition be prohibited. * * *"

We do not contend that this section is applicable to the case at hand because the Board of Managers of the Missouri School for the Deaf has far greater power with regard to the control of the buildings connected with that school than that possessed by the ordinary board of directors in the public school system. The control of the former is absolute so long as there is no abuse of discretion or diversion of the property from the use for which it was intended.

CONCLUSION

In view of the foregoing authorities, it is the conclusion of this department that the Board of Managers of the Missouri School for the Deaf may permit the use of its buildings for meetings which are of general public interest, where no expense to the State is involved and where such use does not interfere with the occupancy or training of the regular students of such school and the purposes for which it was created.

Respectfully submitted

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APPROVED:

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