

SCHOOLS: Missouri School for the Deaf cannot sell typewriters directly to the War Production Board.

April 28, 1943

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Mr. Truman L. Ingle
Superintendent
Missouri School for the Deaf
Fulton, Missouri

Dear Sir:

We are in receipt of your opinion request of April 22, 1943, which reads:

"We have had repeated requests from the War Production Board asking that we sell them a certain number of our typewriters.

"While we will be functioning under rather a difficult set-up if we do this, we do want to do everything possible to further the war effort. I am somewhat concerned as to whether or not we have the legal right to offer these typewriters for sale to the War Production Board.

"I am, therefore, writing to request an opinion from your office as to whether or not we can legally turn over one or more of our typewriters to the War Production Board. Of course, it is understood that we receive for these typewriters the amount paid as set-up by the War Production Board."

Your question, "whether or not we can legally turn over one or more of our typewriters to the War Production Board" involves the right that you may have to dispose of State property.

There is no statutory or constitutional provision that expressly gives the board of managers of the School for the Deaf the power or authority to dispose of property belonging to the

State. Section 10864, R. S. Missouri 1939, seems to be the only applicable section on the property of these schools, as to its control. Said section provides:

"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."

This section speaks of "control and care" of state property but nowhere within the statute is disposal of state property discussed, that is, in regard to personalty. The "control and care" of the board of managers, in regard to property, is limited to devoting the property, both real and personal, to the use of the school. No other function for the property is discussed. In fact there is an express limitation on the method of disposal of real property by the board of managers. This is found in the second sentence of said section. It might be argued that this express limitation is exclusive, and that the Legislature at the time of the enactment of this section might have contemplated the disposal of personal property directly by the board of managers since they did not expressly negative such possibility, while they were expressly negating the power of the board of managers to sell real property. This theory has been followed many times in disposing of certain problems. However, this office does not believe that the theory of "expressio unius est exclusio alterius" should be invoked here. That theory is explained in Corpus Juris, wherein it is stated, 59 C. J., Section 582, page 984:

"In accordance with the maxim, 'expressio unius est exclusio alterius,' where a statute enumerates the things upon which it is to operate, or forbids certain things,

it is to be construed as excluding from its effect all those not expressly mentioned; and where it directs the performance of certain things in a particular manner, or by a particular person, it implies that it shall not be done otherwise nor by a different person. So where it prescribes certain conditions, compliance with which are necessary to the existence of a right, no other conditions need be fulfilled; but the maxim should be applied only as a means of discovering the legislative intent, and should never be permitted to defeat the plainly indicated purpose of the legislature, nor will it generally exclude the application of the statute to things of the same class as those expressly mentioned which have come into existence since the passage of the statute."

The first difficulty with the above theory is in the allocation of the proceeds from a sale, if any, of the typewriters to the War Production Board. What use would be made of the proceeds? To whom should the War Production Board make remuneration? While these problems could either be circumvented or solved, they do present some difficulty.

The major difficulty with allowing the board of managers for the School for the Deaf to dispose of the typewriters is found in Section 14595, R. S. Missouri 1939. Therein it is provided:

"The purchasing agent shall have the power to transfer supplies from any department where they are not needed to any other department where they are needed and to direct that proper charges and credits be made on the appropriations of the departments concerned. He shall also have power, subject to the same provisions as for bids for purchases, to sell any surplus or unneeded supplies or property in his hands or owned by the state or any department thereof. He shall keep currently an inventory of all removable equipment owned by the state."

The second sentence of said section provides for the purchasing agent of the State of Missouri to "sell any surplus or

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unneded supplies or property in his hands or owned by the state or any department thereof." Under this section it seems that the power of sale of state property is vested in the purchasing agent. In view of this section the board of managers of the School for the Deaf, apparently, is prevented from selling any "unneded or surplus" supplies on their own initiative.

The proper method would seem to be for the board of managers of the School for the Deaf to request or advise the purchasing agent to make a sale of the typewriters, which the school wishes to dispose of to the War Production Board. The purchasing agent would then make the sale and handle the proceeds therefrom, if he deemed such sale proper.

CONCLUSION

The board of managers of the School for the Deaf does not have the authority to make a sale of state property. A sale of real estate must be with the approval of the Legislature, under Section 10864, R. S. Missouri 1939, and the sale of any personal property must be made through the purchasing agent for the State of Missouri, under Section 14595, R. S. Missouri 1939. Therefore, the board of managers of the School for the Deaf cannot directly sell its personal property, typewriters, in the present instance, to the War Production Board. Such sale must be made by the purchasing agent of Missouri.

Respectfully submitted

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APPROVED:

ROY McKITTRICK
Attorney General of Missouri

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