

MISSOURI SCHOOL for DEAF: Board of Managers must first obtain authority through an appropriate act of General Assembly before a building may be razed.

May 29, 1944



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

Dear Sir:

We are in receipt of your opinion request which reads as follows:

"We have here at the Missouri School for the Deaf a building which has been condemned as unsafe. Our Board of Managers has authorized the wrecking of this building. It has not been occupied for more than four years, but has been a constant source of expense in keeping the roof in proper repair and it is felt that the wise thing to do is to eliminate this expense as quickly as possible. The board has instructed me to write asking for an opinion as to whether or not it is within the legal authority of the board, through the State Purchasing Agent, to ask for bids on the wrecking of the building.

"The board desires to be absolutely within their jurisdiction in this matter. The plan is that whatever salvage may be in the building will go as part, or all, pay for the wrecking.

"I will appreciate it very much if we may have an opinion from your office in time for our next regular board meeting, which will be Friday, June 9."

In this connection we wish to call your attention to Section 10864, Revised Statutes of Missouri 1939, which section reads 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."

From the reading of the above section, supra, we note that the section specifically provides:

"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."

Due to the fact that the building is a part of the real estate, it is our view that the Board of Managers does not have the authority to raze said building described in the opinion request without first obtaining authority through an appropriate act of the General Assembly authorizing the disposal of such building.

To sustain our position we call attention to the case of Keane v. Strodman, 18 S.W. (2d) 896, l.c. 898, wherein the court said in part:

"Certainly where, as at bar, the statute (section 8702) limits the doing of a particular thing to a prescribed manner, it necessarily includes in the power granted the negative that it cannot be otherwise done. This is the general

rule as to the application of the maxim. Even more relevant under the facts in this case is the interpretation given to it by the Kansas City Court of Appeals in Dougherty v. Excelsior Springs, 110 Mo. App. 23, 626, 85 S.W. 112, 113, to this effect: 'That when special powers are conferred, or where a special method is prescribed for the exercise and execution of a power,' that exercise is 'within the provision of the maxim \* \* \* and \* \* \* forbids and renders nugatory the doing of the thing specified except in the particular way pointed out.'

See also the case of State ex rel. Kansas City Power and Light Company v. Smith, State Auditor, 111 S.W. (2d) 513, l.c. 514, par. 2, and the case of State ex. inf. Conkling ex rel. Hendricks v. Sweaney, 270 Mo. 685, l.c. 692, 195 S.W. 114, 116.

We are mindful that the statute, supra, uses the word "disposal" in connection with the word "sale." It is our view that the word "disposal" should be construed in its ordinary meaning, and to this end find that Webster's New International Dictionary, Second Edition, has this to say in defining the word "disposal":

"To get rid of; to put out of the way; to finish with; as, to dispose of rubbish; to dispose of the morning's mail. To transfer to the control of someone else, as by selling; to alienate; part with; relinquish; bargain away."

#### Conclusion

It is the opinion of this department that a building situated on lands owned by the Missouri School for the Deaf cannot be razed by the Board of Managers of such school without first obtaining authority through an appropriate act of the General Assembly of the State of Missouri authorizing such board so to do.

Respectfully submitted,

B. RICHARDS CREECH  
Assistant Attorney General

APPROVED:

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ROY McKITTRICK  
Attorney General

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