ELEEMOSYNARY INSTITUTIONS: Leases on a crop-rent basis may be made for a period in excess of two years.

February 9, 1944

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Hon. Ira A. Jones, President
Board of Managers
State Eleemosynary Institutions
Jefferson City, Missouri

Dear Mr. Jones:

We are in receipt of your letter of February 1, 1944, in which you request an opinion of this department. Your opinion request reads as follows:

> "We would like to have an opinion from you on farm leases. We have one opinion stating that if cash rent is paid we cannot lease for over a biennium.
>
> "Some time ago we submitted some leases to your department which ran for a period of years, but they were on a crop rent basis, no cash being involved. At that time whoever looked at the leases said they were valid, but we do not seem to be able to locate a written opinion from your office covering this matter.
>
> "We ask this specific question: If a lease is made on a farm by the Board of Managers of the Eleemosynary Institutions on a crop rent basis, may we make said lease for more than a biennium, say for three or five years?"

No lease accompanied the above request so it will not be possible to rule on any specific lease but only to treat the question in general terms.

Section 9265, R. S. Mo. 1939, provides:

"If the curators, managers, trustees or other officers having control of any educational, eleemosynary or other public institutions belonging to the state, or any executive committee, by whatever name called, having subordinate control under such curators, managers, trustees or other officers, as aforesaid, or any president, superintendent, steward, or other officer in immediate charge of any such institution, or any person having the business management of any such institution, shall contract, in the name or for the use of such institution, any debt for which there shall not be at the time an adequate appropriation, every such curator, manager, trustee or other officer in control, as aforesaid, and every such committeeman, and every such president, superintendent, steward or other officer in immediate charge, as aforesaid, and any person having the business management of any such institution as aforesaid, shall be personally liable for such debt to the person with whom such is contracted, or the assignee thereof, and, in addition, shall, on conviction, be deemed guilty of a misdemeanor: Provided, that no such curator, manager, trustee or officer in control or committeeman, as aforesaid, shall be so liable, as aforesaid, or be deemed guilty, as aforesaid, if at the time of incurring such debt he shall require the ayes and noes to be taken and recorded on the question of incurring such debt, and shall himself vote against incurring such debt: Provided further, that nothing herein shall prohibit such managers of any such institutions from incurring debts for the necessary support of such institutions from January first of the years the general assembly meets, until the appropriations for such institutions are made, when the funds of such institutions are exhausted."

Your attention is directed to page 2 of an opinion sent to you by this department under date of February 24, 1942, which reads as follows:

> "No debt can be contracted, under the above section 'for which there shall not be at the time an adequate appropriation.' It is well settled in this State that an appropriation is for only two years. Article X, Section 19, Constitution of Missouri."

If a certain share of crops produced on lands described in a lease is the sole consideration for the lease and no money rent is to be paid, then the question is whether this payment would constitute a "debt." It will be noted here that unless the rent is paid in money the restriction as to an adequate appropriation is not involved in this question.

In the case of Lowery v. Fuller, 221 M. A. 495, 281 S. W. 968, l. c. 972, it is said:

> "It is the rule that a sum payable upon a contingency is not a debt, which is an unconditional promise to pay a fixed sum at a specified time and does not become a debt within the meaning of the law until the contingency has happened. The words "debt" and "indebtedness" are not synonymous with the word "liability." Saleno v. Neosho, 30 S. W. 190, 127 Mo. 627, 27 L.R.A. 769, 48 Am. St. Rep. 653."

And again, in the case of Gilman v. Commissioner of Internal Revenue, 53 Fed. (2d) 47, l. c. 50:

> "A debt is 'that which is due from one person to another, whether money, goods or services; that which one person is bound to pay to another, or perform for his benefit. Webster's New International Dictionary. 'In order to create indebtedness there must be an actual liability at the time, either to pay then, or at

> some future time.' Bouv. Law Dict. Vol. 2, page 1531. 'Every debt must be solvendum in praesenti or solvendum futuro--must be certain and in all evidence payable; whenever it is uncertain whether anything will ever be demandable by virtue of the contract, it cannot be called a "debt." While the sum of money may be payable upon a contingency, yet in such case it becomes a debt only when the contingency has happened, the term "debt" being opposed to "liability" when used in the sense of an inchoate or contingent debt.' 17 C. J. 1377; Emil Weitzner v. Commissioner, 12 B. T. A. 724; Saleno v. City of Neosho, 127 Mo. 627, 30 S. W. 190, 27 L. R. A. 769, 48 Am. St. Rep. 653; Lowery v. Fuller, 221 M. A. 495, 281 S. W. 968; Clinton Mining & Mineral Co., v. Beacom (D. C.), 264 Fed. 228; Balden v. Jensen (D. C.), 69 Fed. 745."

There is no certainty that any crop will be growing owing to circumstances beyond the control of the lessee, in which event, there would be no payment to the lessor and no consequent liability on the part of the Board of Managers. We do not believe that a debt is created by such a lease as is referred to in Section 9265, supra.

Conclusion

It is the opinion of this department that the Board of Managers of the State Eleemosynary Institutions may authorize the execution of leases on a crop-rent basis for more than a biennium.

Respectfully submitted,

RALPH C. LASHLY
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
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