ELEEMOSYNARY INSTITUTIONS:
CONSTRUCTION OF HOUSE BILLS
NOS. 457 and 459:

The grant by the City of St. Louis to the State of Missouri, on July 19, 1948, of the colony for feeble-minded and epileptics, and the state hospital for the insane, were absolute grants unconditioned and without possibility of reverter; the state of Missouri is not bound to perpetually maintain the two above institutions; personal property or additions made to them after the grant cannot revert to the City of St. Louis.

FILE
48

November 25, 1953

Honorable Edgar J. Keating,
Senator, 9th District of Missouri
1250 Dierks Building
Kansas City, Missouri

Dear Sir:

This department is in receipt of your request for an official opinion. You thus state your request:

> "The Sixty-fourth General Assembly passed two bills providing for the transfer of the St. Louis City Sanitarium and the St. Louis Training School to the State of Missouri. See Laws of 1947, pages 247 and 250. Section three of each of these bills contains a provision that the title acquired by the state would be upon the express condition that upon acquiring the institutions the state would take charge of the same and maintain them for the previous purposes, etc.
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> "I have been informed that the transfer to the state was by deed containing a reservation to the effect that if the state ceased to maintain the institutions the title would revert to the City of St. Louis. I do not believe that this reversion can be read into the provisions of the above laws, therefore I do not believe that the laws bound the state to operate these institutions at their present locations perpetually.
>
> "1. Does the City of St. Louis under these laws have a right to the property and improvements in the event the General Assembly decided to abandon these institutions and build new institutions elsewhere?
>
> "2. Is the state perpetually bound under these laws to maintain these institutions at their present locations, even though changing circumstances may indicate the necessity for abandoning the present locations?

"3. In the event of such abandonment would the City of St. Louis be entitled to the additions, capital improvements, and the additional personal property such as X-Ray, laboratory equipment, etc., provided after the transfer of title by the 1947 laws?"

In order to fully present the issues here involved we deem it necessary to set forth in detail the events leading up to the situation with which we are here presented.

On June 24, 1947, the City of St. Louis, through its duly authorized representatives, enacted Ordinance No. 44153, Sections 1 and 2 of which read:

"Be it ordained by the City of St. Louis, as follows:

"Section One. The Mayor and Comptroller are hereby authorized to transfer and convey to the State of Missouri or to such agency or department of the State as may be duly designated by the General Assembly thereof, the institution, buildings and ground known as the City Sanitarium located on Arsenal Street west of Brannon Avenue and east of Sublette Avenue in the City of St.Louis, Missouri, including the equipment therein for the sum of One Dollar ($1.00), and to sell to the State all medical supplies, food and coal at said institution at the time of such transfer at a price to be agreed upon between the City, acting by and through its Comptroller and the State, acting by and through its proper officers and agents, and to enter into a contract with the State providing for the temporary furnishing to the City of St. Louis of electric current, heat, hot water, refrigeration, and other services now being supplied to other City institutions by the power plant located in the City Sanitarium at a charge for such services to be mutually agreed upon between the City, acting by and through its Comptroller and the State, acting by and through its proper officers and agents.

"Section Two. The authority conferred upon the Mayor and Comptroller in the preceding Section shall not be exercised until the General Assembly of the State of Missouri shall have enacted legislation authorizing the State of Missouri to accept the City Sanitarium from the City of St. Louis with the understanding that the State of Missouri shall maintain and operate said institution as a State Hospital for the insane."

Honorable Edgar J. Keating

On December 22nd, 1947, the City of St. Louis, through its duly authorized representatives, enacted Ordinance No. 44325, Section 1 of which ordinance reads in part:

> "Section One. The Mayor and Comptroller are hereby authorized to transfer and convey to the State of Missouri, or to such agency or department of the State as may be duly designated by the General Assembly thereof, the institution and buildings located at Bellefontaine and Hall Roads in St. Louis County, Missouri, known as the St. Louis Training School, together with the equipment and supplies therein, and the whole or any part of the ground upon which the St. Louis Training School is located, for the sum of One Dollar; the said lands, the conveyance of the whole or any part of which is hereby authorized, being more particularly described substantially as follows;* *"

Section 2 of the aforesaid Ordinance reads:

> "Section Two. The authority conferred upon the Mayor and Comptroller in the preceding section shall not be exercised until the General Assembly of the State of Missouri shall have enacted legislation authorizing the State of Missouri to accept the St.Louis Training School from the City of St. Louis, and providing that, after acquiring the said institution, buildings and ground, or a designated part thereof, the State of Missouri, through the Department of Public Health and Welfare, or any other than existing or thereafter established appropriate agency, shall take charge of said institution, and the same shall be maintained, managed, controlled and operated as a State school or colony for feeble-minded and epileptics in accordance with the provisions of Article VI, Chapter 51, of the Revised Statutes of Missouri, 1939, and any other law now existing or which may be hereafter enacted relating to the institutions provided for in said article." (Underscoring ours).

Thereafter, on April 13, 1948, the 64th General Assembly of Missouri enacted House Bill No. 457, Section 1 of which reads in part as follows:

> "Section 1. Transfer of property on which is located the St. Louis City Sanitarium to the State of Missouri.-- The State of Missouri is hereby authorized and directed to accept, in the manner and subject to the conditions hereinafter provided, the transfer and conveyance from The City of St.Louis, or from the Mayor and Comptroller thereof, of the institution, buildings and ground located on Arsenal

Street west of Brannon Avenue and east of Sublette Avenue in the City of St. Louis, Missouri, known as the City Sanitarium, together with the equipment therein, for the sum of One Dollar; the said grounds, the conveyance of which is hereby authorized and directed to be accepted, being more particularly described substantially as follows:***"

Sections 2 and 3 of the aforesaid bill read as follows:

"Section 2. Director of Department of Public Health and Welfare designated to accept transfer.-- The director of the Department of Public Health and Welfare is hereby designated as the state officer authorized and directed on behalf of the State of Missouri to accept the transfer and conveyance of all or any part of the above-described lands. The property so transferred and conveyed shall be held, occupied and controlled by the Department of Public Health and Welfare, and title thereto shall vest in the Director of Public Health and Welfare, as trustee, for and on behalf of the State of Missouri, pursuant to the Laws of Missouri, 1945, page 948, section 10.

"Section 3. City sanitarium to be operated as a state hospital.-- The title acquired by the State of Missouri to the lands, buildings and equipment described herein shall be upon the following express conditions, to-wit, that after acquiring the said institution, buildings and ground, the State of Missouri, through the Department of Public Health and Welfare, or any other then existing or thereafter established appropriate agency, shall take charge of said institution, buildings and ground, and the same shall be maintained, managed, controlled and operated as a State hospital for the insane in accordance with the provisions of Articles 1, 2 and 4, Chapter 51 of the Revised Statutes of Missouri, 1939; of Sections 1 to 36, inclusive, Laws of Missouri, 1945, pages 945 to 956, inclusive; of Laws of Missouri, 1945, pages 902, 903, 905, 906-913, inclusive; and of any other law now existing or which may be hereafter enacted relating to state hospitals for the care and treatment of the insane: Provided, that nothing in this Act shall be construed to prevent the State of Missouri or any proper agency thereof from providing for the care and treatment of any insane person or persons upon any premises or at any institution other than the premises and institution transferred to the State pursuant to this Act." (Underscoring ours).

And on the same day the 64th General Assembly of Missouri enacted House Bill No. 459, Section 1 of which reads in part:

> WSection 1. Transfer of property on which is located the St. Louis Training School to the state of Missouri.--The state of Missouri is hereby authorized and directed to accept, in the manner and subject to the conditions hereinafter provided, the transfer and conveyance from The City of St. Louis, or from the Mayor and Comptroller thereof, of the institution and buildings located at Bellefontaine and Hall Roads in St. Louis County, Missouri, known as the St. Louis Training School, together with the equipment and supplies therein, and the ground upon which the St. Louis Training School is located, for the sum of One Dollar; the said lands, the conveyance of which is hereby authorized and directed to be accepted, being more particularly described substantially as follows:

Sections 2 and 3 of said bill read as follows:

> "Section 2. Director of Department of Public Health and Welfare designated to accept transfer.--The Director of the Department of Public Health and Welfare is hereby designated as the state officer authorized and directed on behalf of the State of Missouri to accept the transfer and conveyance of the above-described lands. The property so transferred and conveyed shall be held, occupied and controlled by the Department of Public Health and Welfare, and title thereto shall vest in the Director of Public Health and Welfare, as trustee, for and on behalf of the State of Missouri, pursuant to the Laws of Missouri, 1945, page 948, section 10.
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> "Section 3. Training school to be operated as state school or colony for feeble-minded.--The title acquired by the State of Missouri to the lands, buildings and equipment described herein shall be upon the following express conditions, to-wit, that after acquiring the said institution, buildings and ground, the State of Missouri, through the Department of Public Health and Welfare, or any other then existing or thereafter established appropriate agency, shall take charge of said institution, buildings and ground, and the same shall be maintained, managed controlled and operated as a State school or colony for feeble-minded and epileptics in accordance with the provisions of Article 6,

> Chapter 51, of the Revised Statutes of Missouri, 1939, of Sections 1 to 36, inclusive, Laws of Missouri, 1945, pages 945 to 956, inclusive, and of any other law now existing or which may be hereafter enacted relating to institutions for the care and treatment of feeble-minded and epileptics: Provided, that nothing in this Act shall be construed to prevent the State of Missouri or any proper agency thereof from providing for the care and treatment of any feeble-minded or epileptic person or persons upon any premises or at any institution other than the premises and institution transferred to the State pursuant to this Act."

Thereafter, on July 19, 1948, the City of St. Louis, through its duly authorized representatives, executed two quit claim deeds, which, omitting the legal description of the property conveyed and the attestation clause, read as follows:

> "THIS DEED, Made and entered into this nineteenth day of July, nineteen hundred and forty-eight, by and between THE CITY OF ST. LOUIS, a municipal corporation, by and through Aloys P. Kaufmann, Mayor, and Louis Nolte, Comptroller, of The City of St. Louis, State of Missouri, Party of the First Part, and the DIRECTOR OF THE DEPARTMENT OF PUBLIC HEALTH AND WELFARE OF THE STATE OF MISSOURI, as Trustee for the State of Missouri, Party of the Second Part.
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> "WITNESSETH, that the said Party of the First Part, for and in consideration of the sum of One Dollar ($1.00), paid by the said Party of the Second Part, the receipt of which is hereby acknowledged, does by these presents REMISE, RELEASE AND FOREVER QUIT-CLAIM unto the said Party of the Second Part the institutions, buildings and ground known as the City Sanitarium, located on Arsenal Street west of Brannon Avenue and east of Sublette Avenue in the City of St. Louis and State of Missouri, with the understanding that the State of Missouri shall maintain and operate said institutions as a State Hospital for the insane, the above grounds being more particularly described substantially as follows:
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> * * * * * *
>
> "TO HAVE AND TO HOLD the same, together with all rights and appurtenances to the same belonging, unto the said Party of the Second Part, its successors and assigns forever, with the understanding that the state of Missouri shall maintain and operate

said institutions as a State Hospital for the insane.

"IN WITNESS WHEREOF, the said Party of the First Part has executed these presents the day and year first above written,

"THIS DEED, Made and Entered into this nineteenth day of July, Nineteen Hundred and Forty-eight, by and between THE CITY OF ST. LOUIS, a municipal corporation, by and through Aloys P. Kaufmann, Mayor, and Louis Nolte, Comptroller, of The City of St. Louis, State of Missouri, Party of the First Part, and the DIRECTOR OF THE DEPARTMENT OF PUBLIC HEALTH AND WELFARE OF THE STATE OF MISSOURI, as Trustee for the State of Missouri, Party of the Second Part.

"WITNESSETH, that the said Party of the First Part, for and in consideration of the sum of One Dollar ($1.00), paid by the said Party of the Second Part, the receipt of which is hereby acknowledged, does by these presents REMISE, RELEASE AND FOREVER QUIT-CLAIM unto the said Party of the Second Part, the institution, buildings and ground located at Bellefontaine and Hall Roads in St. Louis County, Missouri, known as the St. Louis Training School, providing that, after acquiring the said institution, buildings and ground, or a designated part thereof, the State of Missouri, through the Department of Public Health and Welfare, or any other then existing or thereafter established appropriate agency, shall take charge of said institution, and the same shall be maintained, managed, controlled and operated as a State school or colony for feeble-minded and epileptics in accordance with the provisions of Article VI, Chapter 51, of the Revised Statutes of Missouri, 1939, and any other law now existing or which may be hereafter enacted relating to the institutions provided for in said article, the said lands being more particularly described substantially as follows:

* * * * * *

"TO HAVE AND TO HOLD the same, together with all rights and appurtenances to the same belonging, unto the said Party of the Second Part, its successors and assigns forever, providing that, after acquiring the said institution, buildings and ground, or a designated part thereof, the State of Missouri, through the Department of Public Health and Welfare,

> or any other then existing or thereafter established appropriate agency, shall take charge of said institution, and the same shall be maintained, managed, controlled and operated as a State school or colony for feeble-minded and epileptics in accordance with the provisions of Article VI, Chapter 51, of the Revised Statutes of Missouri, 1939, and any other law now existing or which may be hereafter enacted relating to the institutions provided for in said article.
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> "IN WITNESS WHEREOF, the said Party of the First Part has executed these presents the day and year first above written." (Underscoring ours.)

Your first question is: "Does the City of St. Louis, under these laws, have a right to the property and improvements (of these two properties conveyed) in the event the General Assembly decided to abandon these institutions and build new institutions elsewhere?"

Stated in legal terms, the question which we have to decide is whether these two grants by the City of St. Louis to the State of Missouri were conditioned upon use and could be said to contain a reverter clause so that if at any future time the State of Missouri ceased to use these two properties, or either of them, for the type of state institution for which these two properties were being used at the time of the grant, the property would revert to the City of St. Louis.

In the deed of the City Sanitarium the only words which touch upon this issue are . . . "with the understanding that the State of Missouri shall maintain and operate said institution as a state hospital for the insane...".

In the deed of the feeble-minded and epileptic institution the only words which touch upon this issue are . . . "providing that, after acquiring the said institution. . . the State of Missouri. . . shall take charge of said institution . . . . and the same shall be maintained as a state school or colony for feeble-minded and epileptics . . .".

If there is a reverter in these two deeds it must be found in the above portions of the deeds.

We would first direct attention to the case of Chouteau v. City of St. Louis, 55 S.W.(2d) 299, l.c. 301, in which the Supreme Court of Missouri discusses the matter of a conditional fee and of reverter as follows:

> "In counts two and three of the petition plaintiff pleaded in the alternative. He thereby pleads that the deed conveyed either a determinable fee or a conditional fee. However, he insists that the deed conveyed a determinable fee. In a determinable estate the condition is incorporated into and forms part of the limita-

> tion (grant). Goodeve: Modern Law of Real Property (3d Ed.) p. 180. The grant in such case is not upon a condition subsequent, and no re-entry is necessary; but by the terms of the grant the estate is to continue until the happening of some event. And upon the happening of said event, the estate will cease and determine by its own limitation. The proper words for the creation of such an estate are, 'until,' 'during,' 'so long as,' and the like. Thompson on Real Property, Sec.2105, pp. 170, 171. Challis: Real Property, 1885, p. 206.
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> "(4) As stated by defendant city, 'the deed under consideration uses none of these words, nor does it use any other expression indicating an intention to cut the title to a base or determinable fee, nor is there any clause in the deed providing for a reverter. The conveyance of 'all of their right, title, claim, interest and estate', by the grantors directly negatives the idea of a reverter. The grant was forever, and not "so long as", "while", "during" or "until".'
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> "Plaintiff argues that the words of condition following the habendum clause of the deed is an expression indicating an intention to convey a determinable fee. We do not think so. The condition follows: '* * * But upon this Condition nevertheless that the said piece of ground by these presents given and Conveyed shall be used and appropriated "forever" as the site on which the Court house of the County of St. Louis shall be erected.' The words 'upon condition' may be used to form a part of a limitation (grant) and thereby convey a determinable fee. But in this deed said words introduced a new clause. 3 Thompson, Real Prop., Sec. 1966. They were superadded to the limitation of the estate. Goodeve: Modern Law of Real Property (3d Ed.) p. 180; 1 Tiffany: Real Prop. (2d Ed.) Sec. 90. It follows that the deed did not convey a determinable fee."

It will be noted that the Court held that the proper words for the creation of a conditional fee in a grant are "until," "during," "so long as," and the like. It is noted that no such words are present in either of the deeds in the instant case.

We would next direct attention to the case of Holekamp Lumber Co. v. State Highway Commission, 173 S.W. 2d, 938, at l.c. 942, et seq. of its opinion the Missouri Supreme Court states in regard to the matter of conditional grant and reverter:

> "The question whether a clause in a deed (or contract) is a condition subsequent or a covenant is one of intent to be gathered from the whole instrument by following out the object and the spirit of the deed or contract. City of St. Louis v. Wiggins Ferry Co., 88 Mo. 615; Haydon v. St. Louis & S. F. R. Co., 222 Mo. 126, 121 S.W. 15.' * * * conditions subsequent are not favored in law, and are construed strictly, because they tend to destroy estates. * * * When relied on to work a forfeiture, they must be created in express terms or by clear implication.* * *' Morrill v. Wabash St. L. & P. Ry. Co., 96 Mo. 174, 9 S.W. 657, 659. This is the universal rule. University City v. Chicago R. I. & P. R. Co., supra; Haydon v. St.Louis & S. F. R. Co., supra; Catron v. Scarritt Collegiate Institute, 264 Mo. 713, 175 S.W. 571; German Evangelical Church v. Schreiber, 277 Mo. 113, 209 S.W. 914; Chouteau v. City of St. Louis, 331 Mo. 781, 55 S.W. 2d 299; Bagby et al. v. Missouri-Kansas-Texas R. Co., Mo. Sup. 171 S.W. 2d 673. Plaintiff has not alleged that the grant contained express terms that a breach of the condition should work a forfeiture, or any provision for a reverter of the fee (or of the use) upon the breach of the condition, or any provision, we believe, from which an intention that there should be a forfeiture may be clearly implied. The defendant (grantee) is charged by law with the responsibilities and vested with the powers necessary to construct and maintain the state highway system of Missouri, of which Missouri State Highway No. 30 is a part. After the grant, the defendant did maintain the highway along plaintiff's premises at the then existing grade for a period of approximately six years. But, considering the object of the grant--use 'as a part of said highway for highway purposes'--it may not be clearly implied that the parties intended, should the defendant find it necessary to change the grade of the highway from the grade which was existent at the time of the grant, that the defendant should forfeit the land, or its use, and that the fee, or user, should revert to plaintiff and the public be deprived of the use thereof, thus defeating the very object to the grant. (Underscoring ours.)

> "Nor does the language of the grant, as alleged, amount to the creation of a determinable fee qualified by limitation (fee simple determinable), which terminated ipso facto upon the occurrence of the event, or upon the cessation of the use, by which the estate is qualified. In order to create such a fee, it is necessary that words (absent in the grant as alleged herein) in the grant by which the limitation is expressed should relate to time. Appropriate words for the creation of such a fee are 'until,' 'during,' 'so long as,' and the like. Chouteau v. City of St. Louis, supra; Vol. I, Property. Restatement of the Law, Sec. 44, Comment 1, p. 128."

We would now direct attention to the case of Fuchs v. Reorganized School Dist. No. 2, Gasconade Co., 251 S.W. 2d 677, at l.c. 678, et seq., the Court in its opinion states:

> "Plaintiffs, the only heirs of the grantors in the deed later set forth, base their claim of title on the propositions that the deed conveyed to School District 51 (defendant's predecessor in title) a determinable fee with a possibility of reverter; that defendant had abandoned the real estate for school purposes; that the intent of the grantors was to provide for the automatic reversion of the fee simple estate upon abandonment; and that the possibility of reverter has descended to plaintiffs as the heirs of the grantors.
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> "Defendant contends that the deed conveyed a fee simple title with no limitations or conditions on the grant.
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> "The deed, dated August 30, 1892, was: 'Know All Men By These Presents: That Anton Fuchs, and Annie Fuchs, of the County of Gasconade, in the State of Missouri, have this day, for and in consideration of the sum of One and no/100 Dollars to the said Anton Fuchs in hand paid by School District No. Fifty-One, Township No. 41, Range Five West, of the County of Gasconade, in the State of Missouri, Granted, Bargained, and Sold, and by these presents do Grant, Bargain and Sell, unto the said School District on which to Keep and Maintain a Public School-House, the following described tracts or parcels of land, situated in the County of Gasconade, in the State of Missouri, that is to say:

"'one Acre, bounded as follows: Commencing at the Northwest corner of the Southeast Qr. of the Northwest Qr. of Section No. Eleven, in Township No. Forty-One (41) Range No. Five (5) West; thence running South 8 Rods; thence East 20 Rods, thence North 8 Rods and thence West 20 Rods to the place of beginning.

"'To Have And To Hold The premises hereby conveyed, with all the rights, privileges and appurtenances thereto belonging or in anywise appertaining, unto the said School District No. 51, Twp. 41, Range 5 West, for the above purpose, forever, I, the said Anton Fuchs hereby covenanting to and with the said School District No. 51, Twp. 41, Range 5 West and its assigns, for himself, his heirs, executors and administrators to Warrant and Defend the title to the premises hereby conveyed, against the claim of every person whatsoever.'

"Plaintiffs contend that the language in the granting clause 'on which to Keep and Maintain a Public School-House' and the language 'for the above purpose' in the habendum clause, limited the estate conveyed to a determinable fee.

"We are of the opinion that the deed conveyed a fee simple title without limitation or condition. The language relied upon by plaintiffs constitutes nothing more than an expression or declaration of the purpose for which the grantors expected the land to be used. The deed contains no express exception or reservation, no express limitation upon the duration of the estate conveyed, no express condition upon which the estate was conveyed, and no express provision for forfeiture, for re-entry, or for reverter.

"Plaintiffs concede that there are no express terms in the deed which provide for a reverter in the event that a public school house is no longer kept and maintained. However, they contend that such intention is manifest from a consideration of the deed as a whole; that the words 'on which to Keep and Maintain a Public School-House' and 'for the above purpose' are 'insufficient to create "a possibility of reverter" even though it (the limitation) may be lacking in completeness and precision,' and that to 'give force

to a "possibility of reverter", the law implies a reverter as of necessity to effect the forfeiture.' The difficulty with plaintiffs' contention is that there is nothing in the deed or in the evidence as to circumstances under which it was executed from which an intention to convey a determinable fee may be found. No words usually employed to create such an estate, like 'until', 'during', 'so long as', are used, nor is any other language used in the deed expressing or indicating an intention to limit the title to a determinable fee. Chouteau v. City of St. Louis, 331 Mo. 781, 790 (3), 791 (4), 55 S.W. 2d 299, 301 (3), (4). This is not a case in which language has been used which, though not complete or precise, is sufficient to permit the court to find an intent to convey a determinable fee. Plaintiffs rely upon Koehler v. Rowland, 275 Mo. 573, 582, 205 S.W. 217, 219, 9 A.L.R. 107. That case on its facts lends no support to plaintiffs' position. The rule of construction there stated is a proper one, viz., 'If the grantors fail to express their contract with completeness and precision, but the intention, nevertheless, clearly appears from the instrument, if its spirit and purpose are manifest from a consideration of the instrument as a whole, it will be given an interpretation in accordance with such intention.' 205 S.W. 219. But this rule may not be applied to the instant deed. Here, there is no manifest purpose clearly appearing from the deed as a whole justifying the interpretation contended for by plaintiffs. We may not rewrite a deed in order to effectuate what conjecturally may have been the unexpressed intention of the grantors.

"It is well established that language which merely states the purpose for which land is conveyed and which does not contain words which relate to time, does not create a determinable fee. Holekamp Lumber Co. v. State Highway Commission, Mo. Sup., 173 S.W. 2d 938, 943 (8,9); Chouteau v. City of St.Louis, supra; note 44 L.R.A., N.S., 1220, 1222 (III).

"It is true that the consideration expressed in the instant deed was $1. Consideration may be a proper circumstance to consider as an aid in determining the intention of the parties. The fact that the consideration was nominal might, in connection with language lacking in preciseness or in connection with other circumstances surrounding the conveyance, be an important aid in determining whether a determinable fee was intended to be conveyed. But, as here, the fact of nominal consideration, standing alone, is not sufficient from which to find an intention to convey other than an unlimited fee.

> "Plaintiffs do not contend that the deed conveyed an estate upon condition subsequent. Clearly, it did not. Chouteau v. City of St. Louis, supra, 55 S.W. 2d 301; Holekamp Lumber Co. v. State Highway Commission, supra, 173 S.W. 2d 942 (5-7).
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> "We hold that the deed from Mr. and Mrs. Fuchs conveyed an absolute estate in fee simple; that defendant is vested with fee simple title to the described real estate; that plaintiffs have no right, claim, interest, or title in or thereto."

We particularly note the statement above, "language which merely states the purpose for which land is conveyed and which does not contain words which relate to time, does not create a determinable fee." This, it seems to us, is the situation in the instant cases, for these deeds merely state the purpose for which the property conveyed is to be used, and no time limit is included or indicated.

We feel, furthermore, that if it had been the intention that in case the state ceased to maintain and use these properties for the original purposes, that the property would revert, that the representatives of the City of St. Louis would have so stated in these deeds, and that not having done so such intention cannot be read into either of these documents.

Finally, it is our feeling that the State of Missouri, in the enabling acts quoted above (House Bill No. 457 and House Bill No. 459) was very careful not to bind itself to perpetually maintain these two institutions for any particular length of time or to maintain them at all. It will be noted that House Bill No. 457 states:

> "Provided, that nothing in this Act shall be construed to prevent the State of Missouri or any proper agency thereof from providing for the care and treatment of any insane person or persons upon any premises or at any institution other than the premises and institution transferred to the State pursuant to this Act."

House Bill No. 459 states:

> "Provided, that nothing in this Act shall be construed to prevent the State of Missouri or any proper agenby thereof from providing for the care and treatment of any feeble-minded or epileptic person or persons upon any premises or at any institution other than the premises and institution transferred to the State pursuant to this Act."

These provisions could only mean that the State of Missouri could provide for the care of all of its insane, feeble-minded, and epileptic persons, away from these institutions, which would constitute an abandonment of the use made of these two institutions at the time of transfer.

It would also seem that these provisions stated above would go far to negative any construction which would hold that these two deeds contained reverter clauses which would, in case the State of Missouri ceased to maintain these two institutions for the original purpose, revert back to the City of St. Louis the title in these properties. Let us now look at the enabling ordinances (No. 44153 and No. 44325) supra, to determine whether, under the grant of authority made by them to the mayor and comptroller, these two officials had the authority to convey the property discussed above, without a reverter clause.

The only words in Ordinance No. 44153 which could be construed as restrictive were "with the understanding that the state of Missouri shall maintain and operate said institution as a state hospital for the insane".

In Ordinance No. 44325, the words used were "the same (property) shall be maintained, managed, controlled and operated as a state school or colony for feeble-minded and epileptics * * *".

The deed made by the City of St. Louis under authority of Ordinance No. 44153 uses the very same words that are used in the ordinance. The deed executed by the city under the authority of Ordinance No. 44325 contained the words "provided that, after acquiring the said institution * * * the state * * * shall take charge of said institution * * * and the same shall be maintained * * * as a state school or colony for epileptics * * *".

As we pointed out above, the deed executed under authority of Ordinance No. 44153 used exactly the same words that the ordinance used, which words we have held above did not constitute a reverter in the deed. The deed drawn under Ordinance No. 44325 used the words "provided that * * * the institution shall be maintained * * * as a state school * * *".

We also held above that these words, in the deed, did not provide for a reverter. Can we say, then, that words which are used in a deed, when so used do not provide for a reverter, do, when used in a city ordinance, not constitute authority to execute a deed without a reverter clause? We believe that such words, when used in a city ordinance, do give such authority; to hold otherwise would be to hold that when exactly the same words are used in a city ordinance and in a deed they have entirely different meanings in such a significant manner as to not constitute a reverter in the case of the deed, but to constitute a reverter in the case

of the ordinance. For coming to such a conclusion, we find no scintilla of authority in law or justification in reason. We do believe, therefore, that the above ordinances gave the mayor and comptroller of St. Louis the authority to convey the property without a possibility of reverter.

Let us now look briefly at the enabling acts of the Missouri Legislature (House Bills Nos. 457 and 459), which constitute an authorization for the state to accept the two St. Louis properties. Both bills state: "The title acquired by the State of Missouri * * shall be upon the following express conditions, to-wit, that after acquiring the said institution * * * the State of Missouri * * * shall take charge of said institution * * * and the same shall be maintained as a state hospital for the insane* * *."

Both bills also state: "Provided, that nothing in this act shall be construed to prevent the State of Missouri or any property agency thereof from providing for the care and treatment of any insane person or persons upon any premises or at any institution other than the premises and institution transferred to the state pursuant to this act."

We believe that the first quoted portion of this bill does nothing more than state the uses to which these properties shall be put after acquisition, and that the last quoted portion clearly provides that the state is not obligating itself to maintain these institutions perpetually because the reservation in the state of the power to provide for the care of "any insane person or persons" elsewhere, means that if the state so chooses it may not care for any insane persons at the St. Louis institution. We do not, therefore, believe that the enabling acts referred to above would prevent the state from accepting title without possibility of reverter to the grantor City of St. Louis. Therefore, our answer to your first question is that if at any time the State of Missouri should cease to use the two properties in question for the use for which they were granted to the state, the properties would not revert to the City of St. Louis. In view of our answer to your first question, our answer to the second question is that the state is not perpetually bound to maintain these two institutions at their present location.

It also follows from the above that our answer to your 3rd question is that in case the State of Missouri ceases to maintain these institutions, the City of St. Louis would not be entitled to the additions, capital improvements, and the additional personal property provided after the transfer of title.

CONCLUSION

It is the opinion of this department that the grant by the City of St. Louis to the State of Missouri, on July 19, 1948, of the colony for feeble-minded and epileptics, and the state hospital

Honorable Edgar J. Keating

for the insane, were absolute grants unconditioned and without possibility of reverter; that the State of Missouri is not bound to perpetually maintain the two above institutions; that in case the state should cease to maintain these two institutions the personal property or additions made to them after the grant cannot revert to the City of St. Louis.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Hugh P. Williamson.

Very truly yours,

HPW/ld

JOHN M. DALTON
Attorney General