

ARMORIES:

State Board of Education can accept titles to property for the state subject to restrictions.

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Honorable Lewis M. Means,
The Adjutant General,
Jefferson City, Mo.

My dear Sir:

This will acknowledge receipt of your letter requesting an official opinion under date of December 27, 1937, which reads as follows:

"It is contemplated that several armories are to be built in the State of Missouri, using funds appropriated by the Missouri Legislature and in conjunction with WPA Federal funds and local contributions from the people living in the locality of the different armories. It is the understanding that these buildings are to be titled in the name of the State, but it is generally understood and agreed that the building in a local community is to be available for civic, school and other local uses, so long as it does not interfere with the training of the local National Guard unit.

This office is in receipt of request from authorities at Kennett, Missouri, and wish to be advised whether or not the State would accept the deed to the property consisting of the new building and the grounds, with an easement in deed, as follows:

'It is understood and agreed that the city of Kennett and the Kennett School District shall have a perpetual easement in the use of the

building to be constructed on the within described premises so long as such use does not conflict with the necessary training of the local unit of the National Guard located in Kennett, Missouri.'

Opinion is requested as to whether or not such easement in this particular deed, or any other similar project, could be accepted by the State of Missouri."

Under Section 643 R.S. Mo. 1929, a commission was created to accept devises, bequests, donations and gifts. Under this section the commission consisted of the governor, attorney-general and state treasurer, but the act was amended in 1933 at page 251 which names the State Board of Education as the donee to accept gifts for the state. The amended act of 1933, page 251, reads as follows:

"That Sec. 643, Article 1, Chapter 4, Revised Statutes of 1929, be and the same is hereby repealed and a new Section enacted in lieu thereof, to be known as Sec. 643, and to read as follows:

Whenever any devise, bequest, donation, gift or assignment of money, bonds, or choses in action, or of any property, real, personal or mixed, shall be made or offered to be made to this state, the State Board of Education, as constituted by law, shall be and are hereby authorized to receive and accept the same on such terms, conditions and limitations as may be agreed upon between the grantor, donor, or assignor of said property and said officials constituting said Board, so that the right and title to shall pass to and vest in this State; and all such property so vested in this state and the proceeds thereof when collected, may be appropriated for educational purposes, or for such other purposes as the legislature may direct. The intention of this act is to abolish

the commission heretofore created to accept devises, bequests, donations, gifts or assignments of money, bonds or choses in action, or of any property, real, personal or mixed, and to transfer such duties to the state board of education."

The purpose of the amendment and the intention of the legislature in this act was to abolish the commission heretofore created in Section 643 R.S. Mo. 1929. In this amendment you will notice that the State Board of Education is authorized to receive and accept gifts under such terms, conditions and limitations as may be agreed upon between the grantor, donor or assignor of said property and said officials constituting said board.

Section 9510 R.S. Mo. 1929 describes who shall be members of the State Board of Education and reads as follows:

"The supervision of instruction in the public schools shall be vested in a state board of education, whose powers and duties shall be prescribed by law. The superintendent of public schools shall be president of the board; the governor, secretary of state and attorney-general shall be ex officio members, and, with the superintendent, compose said board of education. It shall be the duty of the state board of education to take the general supervision over the entire educational interests of the state; to direct the investment of all moneys received by the state to be applied to the capital of any fund for educational purposes; to see that all funds are applied to such branch of the educational interest of the state as by grant, gift, devise or law they were originally intended."

Under Section 643, page 252, Session Laws of 1933, it is discretionary with the State Board of Education to accept gifts in the name of the state. So long as the State Board of Education in receiving gifts or donations do not violate the rule of contracts as to public policy, the State Board under this section, is given the authority to accept gifts for the state notwithstanding certain restrictions or reservations made in the gift. As described in your request for an opinion, it

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would not violate the rule of contracts against public policy, for the reason that the public is interested in such a contract being made.

This question has not been raised in this state, but in the case of State ex rel. v. Turner, 93 Ohio State 379, 113 N.E. 327, the court held:

"A municipality may deed land to the state for an armory, reserving the right to use the armory for purposes of drill by its police and fire departments."

They also held that:

"Such a contract entered into by the state and municipality was not a contract against public policy."

The same holding was also had in Kansas City School District v. Scheidley, 138 Mo. 672, 40 S.W. 656.

That this contract as presented in your letter is not against public policy is also verified by Section 13871 R.S. Mo. 1929 reads as follows:

"Upon the application of all posts of the grand army of the republic, camps of the united confederate veterans, camps of the united Spanish war veterans and of other societies composed of veterans of any war in which the forces of this state have participated, the officer in charge of any armory owned or leased by the state may permit the use of such armory for the meeting of such veteran societies without charge on dates when the same is not in use for military purposes."

Article 13, Section 7 of the Constitution of the State of Missouri provides as follows:

"The General Assembly shall provide for the safe-keeping of the public arms, military records, banners and relics of the State."

Hon. Lewis M. Means

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CONCLUSION

In conclusion will state that it is the opinion of this office that such an easement described in your letter in this particular deed, or any other similar project, could be accepted by the State of Missouri as hereinbefore provided.

Respectfully submitted

W. J. BURKE
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APPROVED:

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