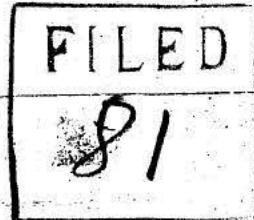


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Opinion No. 81

August 25, 1952



Noted
25 Aug 52

Major General A. D. Sheppard
The Adjutant General of Missouri
Jefferson City, Missouri

Dear Sir:

This department is in receipt of your request for an official opinion, which reads as follows:

"Under provisions of Public Law 829, 80th Congress, the State of Missouri acquired a portion of the former Jefferson Barracks Military Reservation, together with the improvements within the perimeter of the area acquired except telephone, electrical, sewage and water distribution systems. The area was acquired for the use of the military forces of the state, and one of the conditions of the deed was that for a period of twenty years it must be used primarily for the training and maintaining of the civilian components of the Armed Forces of the United States and the State of Missouri, and for no other purpose.

"However, said deed also contained a second provision to the effect that the State nor its assigns will sell, lease or otherwise dispose of any of the property within the period of twenty years from the date of the deed without first obtaining the written consent of the General Services Administrator or his successor in function. For your information a copy of the Quitclaim Deed transferring the property to the State is attached hereto.

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"Some of the buildings acquired through this transfer have never been used since they were acquired by the State and stood vacant for an unknown period of time prior to the acquisition by the State. The property acquired has primarily been used as a base for the maintenance and training of elements of the Missouri Air National Guard, however, the development of these units had not reached the point where all of the structures located on this property were required for their use when they were ordered back into the Active Military Service of the United States at various dates between 1 March 1951 and 1 November 1951. As a result of this and the period of rebuilding that will be necessary after their return to the State, it will be at least from three to four years before all of the structures in this property will be required primarily for the organization, maintenance and training of said military forces.

"On or about 29 May an application was received from the Most Reverend Joseph E. Ritter, Archbishop of St. Louis, for the use of Buildings Nos. 27 and 27A for a period of two years as high school facilities in conjunction with the school the Archdiocese is now operating just across the street in Building No. 67 which they obtained from the War Assets Administration.

"After a period of correspondence, an agreement was reached that the Archdiocese of St. Louis would accept these structures in 'as is' condition, and in lieu of cash rental for the use of said structures, agreed to do at its own expense all repairs and conditioning necessary to make such buildings suitable for use, and at the end of the period to return them to the State in condition equal or superior to that in which received.

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"This would relieve the State of repair and maintenance costs which it is estimated would be not less than \$10,000.00 during the period of proposed use. A copy of the proposed Right of Entry, Use and Occupancy is enclosed herewith for your information and review.

"Under the restriction in the deed mentioned in the second paragraph of this letter, clearance has been received from the Administrator, General Services Administration, to the proposal to grant a Right of Entry, Use and Occupancy under terms indicated. A copy of the correspondence between this office and the General Services Administrator is likewise enclosed for your information.

"An opinion is requested as to whether in the circumstances as outlined above as set forth in the enclosures hereto, the Adjutant General has the legal right and authority under the Constitution and laws of Missouri to execute such a Right of Entry, Use and Occupancy. Also, if your answer is in the affirmative, whether the execution of such Right of Entry, Use and Occupancy would in any way jeopardize the title of the State to the property covered by enclosed Quitclaim deed.

"In view of the early beginning of the school season, it would be appreciated if this matter could be given priority and an opinion supplied at an early date."

The general rule as given in 49 Am. Jur. 270, Section 57, is as follows:

" * * * the state may, as it sees fit, sell or dispose of property real or personal which it holds in a proprietary capacity as any private owner of property may. * * *"

There are no Missouri cases upon this particular proposition, but, as pointed out, the rule in other states is that a state may acquire real or personal property by conveyance, gift, or otherwise, and sell or dispose of it as it sees fit. Adkins v.

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Kalter, 171 Ark. 1111, 287 S.W. 388; State v. Corson, 67 N.J.L. 178, 50 A. 780; South San Joaquin Irrig. Dist. v. Neumiller, 2 Cal. (2d) 485, 42 P. (2d) 64. See also Annotation in 169 A.L.R., page 1399.

As pointed out in your request, the State of Missouri at the present time does not have any use for the structures in question, and by leasing the same to the St. Louis Archdiocese the state would be relieved of repair and maintenance cost which it is estimated would be not less than \$10,000 during the period of the proposed use.

A similar situation arose in the case of Heger v. City of St. Louis, 323 Mo. 103, 20 S.W. (2d) 665, wherein it was questioned whether the city of St. Louis could lease property acquired for a park until plans could be formulated and necessary funds procured for the establishing of the park. Our Supreme Court said, S.W. (2d) 1.c. 668, 669:

" * * * The commissioners simply found themselves in possession of property which could not immediately be devoted to the use for which it had been condemned. The buildings were valuable and it was thought that some of them might be adapted to legitimate park uses. If not, some disposition might be made of them that would salvage more of their value than to wreck them. Some time was needed to formulate plans as well as to procure funds for the conversion of the newly acquired property in harmony with the existing park of which it was to form a part, so that the whole might best serve the public and carry out the purpose for which it was established. It is not unreasonable that these matters should require some time and careful consideration by the board. In the meantime it would have been unwise to let the houses deteriorate by remaining vacant. To have them occupied by responsible tenants and thus cared for while at the same time producing some revenue which inured to the benefit of the public, rather than allow them to remain vacant and depreciate in value or expend the public funds in employing a caretaker, was but the exercise of sound business judgment. We are not persuaded that such action is opposed to sound public policy."

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Again in Harris v. City of St. Louis, 233 Mo. App. 911, 111 S.W. (2d) 995, the St. Louis Court of Appeals said, in regard to the right of the city of St. Louis to rent the municipal auditorium to private persons, S.W. (2d) 1.c. 999:

" * * * It is the law generally that a City when it owns property that, for a time, cannot be used for a strictly public purpose may rent it for private uses. * * *"

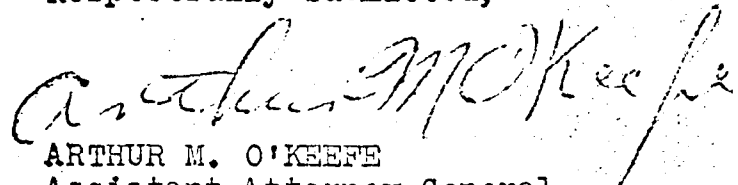
Therefore, under the above authority we believe that the state may lease the buildings which it owns at Jefferson Barracks if at the present time there is no use which can be made of such buildings by the state.

While the technical designation of the contract between the state and archdiocese is a "Right of Entry, Use and Occupancy," still in view of the fact that the archdiocese will make repairs, it is in essence a lease. It is, therefore, our view that the State of Missouri has legal right and authority under the Constitution and laws of Missouri to execute such "Right of Entry, Use and Occupancy."

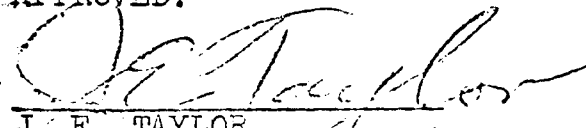
CONCLUSION

It is, therefore, the opinion of this department that the State of Missouri may execute a "Right of Entry, Use and Occupancy" of said buildings to the Archdiocese of St. Louis for the use of buildings Nos. 27 and 27A, located at Jefferson Barracks, and that the execution of such "Right of Entry, Use and Occupancy" would in no way jeopardize the title of this state to such property.

Respectfully submitted,


ARTHUR M. O'KEEFE
Assistant Attorney General

APPROVED:


J. E. TAYLOR
Attorney General

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