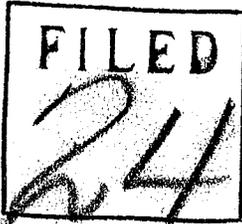


STATE PARK BOARD:
EMINENT DOMAIN:

Missouri State Park Board authorized to
condemn land in Adair County, Missouri.



August 20, 1954

Honorable Phil M. Donnelly
Governor of Missouri
Jefferson City, Missouri

Dear Governor Donnelly:

This will acknowledge receipt of your request for an
official opinion which reads:

"I have received a request from the
Division of Procurement to approve a
Departmental Direct Order No. 895,
issued by the State Park Board of
Missouri, for the purchase of one
hundred fifty-nine (159) acres of
real estate in Adair County, Missouri,
surrounded by the Thousand Hills State
Park. This land is described as
follows:

"The South Half of the Northeast
Quarter except the following described
tract used for School purposes; Com-
mencing at the Northwest Corner of
said Tract and running thence South
17 rods and 88 links, thence East 17
rods and 88 links, thence North 17
rods and 88 links, thence West 17 rods
and 88 links to the place of beginning;
the Northeast Fourth of the Southeast
Quarter of Section 11 and the Northwest
Fourth of the Southwest Quarter of
Section 12, all in Township 62, Range 16."

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"I will appreciate an opinion from your office, advising whether the State Park Board has authority under the law to purchase the above-described real estate, or whether a special Act of the Legislature is required."

The 67th General Assembly enacted HCSHB 8 and 32 (page 317-321, Laws of Missouri, 1953) which repealed Chapter 253, Revised Statutes of Missouri, 1949, relating to the creation of a State Park Board, its powers and duties and enacted several new sections in lieu thereof relating to the same subject.

Section 3 thereof, known as Section 253.040, RSMo 1953 Cumulative Supplement reads:

"1. The board is hereby authorized to accept or acquire by purchase, lease, donation, agreement or eminent domain, any lands, or rights in lands, sites, objects or facilities which in its opinion should be held, preserved, improved and maintained for park or parkway purposes. The board is authorized to improve, maintain, operate and regulate any such lands, sites, object or facilities when such action would promote the park program and the general welfare. The board is further authorized to accept gifts, bequests or contributions of money or other real or personal property to be expended for any of the purposes of this chapter; except that any contributions of money to the state park board shall be deposited with the state treasurer to the credit of the state park fund and expended upon authorization of the state park board for the purposes of this chapter and for no other purposes.

"2. In the event the right of eminent domain be exercised, it shall be exercised in the same manner as now or hereafter provided for the exercise of eminent domain by the state highway commission."

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The board referred to in the foregoing statute is the Missouri State Park Board created under and by virtue of Section 1 of the aforesaid bill, now known as Section 253.020, RSMo 1953 Cumulative Supplement.

Under the foregoing statute, namely Section 253.040, it clearly vests in said board authority to acquire by purchase and eminent domain any lands, which in the opinion of said board should be preserved, improved and maintained for park or parkway purposes. Said board has heretofore determined that it needs the above described land for park purposes, and requested this department to proceed by eminent domain to acquire said land. Proceedings were duly instituted in the Circuit Court of Adair County, Missouri. The trial court ordered said land condemned and appointed commissioners to appraise it. The commissioners returned an appraisal of \$65.00 per acre, and this is a request for money to be paid to the Circuit Clerk of Adair County, Missouri, for said land.

The General Assembly may, by a special act, authorize the purchase of certain land by departments, boards or commissions or agencies of the state, or it may by law vest general authority in any such department, board, commission or agency to acquire by purchase or eminent domain any land it deems necessary for certain specified purposes.

Section 104, page 1075-1076, 81 C.J.S., lays down the general rule and reads:

"A state has the same proprietary rights as a person and may acquire real or personal property by conveyance, will, or otherwise, and hold or apply it to any purpose as it sees fit. A state can hold land in another state with the consent of the latter; It holds such land as a subject and not as a sovereign.

"A state has the same proprietary rights as a person or has the same proprietary rights as a corporation, and a state acting in a proprietary capacity as an owner of property is bound by the same rules as those which it applies to its citizens. It may acquire property, real or personal, by conveyance, will, or otherwise, and hold or apply it to any purpose, public or private, as it sees fit. The power of the

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state in respect of its property rights is vested in the legislature and the legislature alone can exercise the power necessary to the enjoyment and protection of those rights, by the enactment of statutes for that purpose, and, where the state has not given its consent to the acquisition of property in a particular way, it is not entitled thus to acquire it. * * *

In *State v. Gordon*, 36 S.W. (2d) 105, 1.c. 106, the court held that the exercise of the power of eminent domain or to authorize its exercise is wholly legislative and that a state agency exercising such power must be able to point out the statute authorizing same. In so holding the court said:

"The power of eminent domain is inherent in sovereignty and exists in a sovereign state without any recognition of it in the constitution. Constitutional provisions relating to the taking of property are but limitations upon a power which would otherwise be without limit. 10 R. C. L. 11. The right to exercise the power, or to authorize its exercise, is wholly legislative. When an agency of the state asserts that the right to exercise the power has been delegated to it, it must be able to point out a statute which in express terms or by clear implication authorizes such exercise and to the extent claimed. There is no constitutional question involved in this case. * * *

Nichols on Eminent Domain, Second Edition, Volume 2, Section 355, page 981, reads in part, as follows:

"The power to institute the exercise of eminent domain resides under ordinary conditions exclusively in the legislature. In some cases the legislature itself by the mere enactment of a statute effects the taking of certain land or interests in land for the public use, but ordinarily the taking of private property involves so much detail work that it is delegated

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to administrative officers or to subordinate bodies, to be exercised by them either directly or by means of the inception of judicial proceedings, and there can be no doubt that, for proper purposes, the power of eminent domain may be delegated to duly accredited agencies."

See also Northeast State Teachers College v. Palmer, 204 S.W. (2d) 291, 356 Mo. 946.

Authority for the Missouri State Park Board to acquire land by purchase or eminent domain was vested in said board when the State Park Board was first created in 1937. (See Section 15329, Revised Statutes of Missouri, 1939.)

CONCLUSION

Therefore, it is the opinion of this department that the Missouri State Park Board is vested with authority to purchase or acquire land under Section 253.040, supra, and to acquire the above described land by eminent domain.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Aubrey R. Hammett, Jr.

Yours very truly,

JOHN M. DALTON
Attorney General

ARH:vlw