

COUNTIES: Conveyance by county to State Park Board is supported by adequate consideration where Park Board agrees to maintain and develop land as a part of the state park system.

STATE PARK BOARD:



March 12, 1956

Honorable Stephen N. Limbaugh
Prosecuting Attorney
Cape Girardeau County
102 North Main Street
Cape Girardeau, Missouri

Dear Sir:

We have received your request for an opinion of this office, which request reads as follows:

"I am in receipt of your letter dated February 3rd with a copy of an opinion prepared by your assistant, Will F. Berry, Jr., in regard to the purchase of land by the County of Cape Girardeau for the purpose of establishing a park and thereafter transferring such land to the State Park Association.

"As I interpret your letter and enclosed opinion, it appears that the County of Cape Girardeau may by proper procedure float a bond issue for the purpose of purchasing land to be made into a park. I would like to obtain at this time an opinion from your office concerning what constitutes a valuable consideration which is required for a transfer of real property owned by a county of the State of Missouri to an instrumentality of the state.

"At the present time there is strong sentiment in Cape Girardeau County to call an election to determine whether the people of the county would authorize a bond issue for the purpose of purchasing lands in the northern part of Cape Girardeau County for the purpose of establishing a park. Assuming that this issue would carry and that the bonds

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were floated and the land purchased by the County, the State Park Board headed by Mr. Charles Boutin, Cape Girardeau, Missouri, has promised to take over such park, re-develop it and spend at least \$25,000.00 to \$35,000.00 per year on redeveloping and maintaining such park for at least ten years. If this is done, it will unquestionably indirectly benefit the people of the County of Cape Girardeau and will directly benefit many business establishments in our county who would receive additional business from the use of the park by persons other than those residing in the county. My question specifically is this: Keeping in mind the assumption that the people of Cape Girardeau would vote favorably on a bond issue to establish a park in Cape Girardeau and keeping in mind that all of the inhabitants of Cape Girardeau would indirectly benefit from the establishment of a State Park in such county and that many persons would directly benefit therefrom and that the State Park Board would spend \$25,000.00 to \$35,000.00 per year for a period of ten years on such park, would these things provide a valuable consideration for the County of Cape Girardeau making a deed of such purchased park to the State Park Board. If your answer is no, what, in your opinion, would constitute valuable consideration for the transferring of real estate in the County of Cape Girardeau to an instrumentality to the State of Missouri? Is the actual money value of such land to be transferred the only thing that would constitute a valuable consideration?

"I do not mean to burden you with the details of our proposed venture here in Cape Girardeau County. However, the sentiment in the county is very much in favor of getting a State Park here and it appears that floating a bond issue is the only way it can be done. The sentiment of many of the people is that the citizens of our county would certainly benefit from a park and they were interested in having this specific question answered as to what constituted valuable consideration in the transfer of real estate from a county to a state instrumentality."

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The opinion of Mr. Berry, to which you refer in your request, was written to Honorable Scott O. Wright, Prosecuting Attorney of Boone County, on February 11, 1955. The conclusion of that opinion was as follows:

"(1) That a county of the third class may lawfully become indebted, through the issuance of general obligation bonds of such county within the limits and in accordance with the elective requirements of the Constitution and statutes, for the purpose of acquiring real property to be used as a park and recreational area; and

"(2) That real property so acquired may thereafter be conveyed for a valuable consideration to an instrumentality of the State of Missouri."

We find no Missouri case dealing with the question of whether or not the undertaking by the State Park Board to develop and maintain the area as a public park would be a "valuable consideration" for the county's transfer of the land. There are no express statutory provisions dealing with the matter. Section 253.090, RSMo, 1955 Supp., dealing with the State Park Board, provides, in part, that "all moneys received * * * from county or municipal sources shall be paid into the state treasury to the credit of the state park fund, which is hereby created." This is the only statutory reference that we find to dealings between counties and the State Park Board. This section does indicate an intention on the part of the Legislature to permit contributions by counties to the State Park Board for park purposes.

The statutory provisions for the transfer of real estate by county courts are found in Chapter 49, RSMo 1949. Section 49.270 provides:

"The said court shall have control and management of the property, real and personal, belonging to the county, and shall have power and authority to purchase, lease or receive by donation any property, real or personal, for the use and benefit of the county; to sell and cause to be conveyed any real estate, goods or chattels belonging to the county, appropriating the proceeds of such sale to the use of the same, and to audit and settle all demands against the county."

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Section 49.280 provides:

"The county court may, by order, appoint a commissioner to sell and dispose of any real estate belonging to their county; and the deed of such commissioner, under his proper hand and seal, for and in behalf of such county, duly acknowledged and recorded, shall be sufficient to convey to the purchaser all the right, title, interest and estate which the county may then have in or to the premises so conveyed."

The case of Washington County v. Lynn Shelton Post No. 27, etc., 201 Ark. 301, 144 SW2d 20, involved a conveyance by the county of land to an American Legion Post which had agreed to construct on the land a building for the use of the post and the county. The transfer was attacked on the grounds that it was without consideration. From the report of the decision, no monetary consideration appears to have been paid to the county by the American Legion Post. In deciding the case the court stated, 144 SW2d 1.c. 21:

"The appellant contends that there was no consideration for the deed, but it is admitted that the building is being erected, and that there is storage space for the use of Washington County, and an auditorium being built for the benefit of the citizens of Washington County, and there is no claim of fraud.

"Under the law in this state, the control and management of all county property is placed in the county court, and authority is conferred on that court to sell and cause to be conveyed any real estate or personal property belonging to the county. Section 2478 of Pope's Digest reads as follows: 'The county court may, by an order to be entered on the minutes of said court, appoint a commissioner to sell and dispose of any real estate of the county, and the deed of such commissioner, under his hand, for and on behalf of such county, duly acknowledged and recorded, shall be sufficient, to all intents and purposes,

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to convey to the purchaser all the right, title, interest and estate whatever which the county may then have in and to the premises to be conveyed.'

"The conveyance here involved was made pursuant to and in strict compliance with the terms of the statute above quoted, and the attack here relates only to the consideration. The above-quoted statute confers abundant power upon the county court to sell and convey property of the county not held in trust for specific purposes. The county court, having the power to direct the sale, the consideration can only be inquired into for the purpose of establishing fraud, and there is no charge of fraud involved in this case. The decision below was upon the sufficiency of the allegations and the evidence. So far as the allegations in the pleadings and the evidence are concerned, the transaction was inspired by the best motives and purposes on the part of those who participated therein, and nothing short of fraud, or such gross inadequacy as will be equivalent to fraud, is sufficient to invalidate the order of the county court directing the conveyance. The consideration need not be in money, but the county court, in exercising its power, may determine what is to the best interest of the county."

The court concluded, 144 SW2d 1.c. 22:

"Where the county court is by statute clothed with the power to sell and dispose of county property not dedicated to specific use, it may determine what consideration shall be accepted, and unless there is fraud, the judgment of the county court will not be disturbed."

In the case of Little Rock Chamber of Commerce v. Pulaski County, 113 Ark. 439, 168 SW 849, 1.c. 850, the court stated, in discussing a similar question:

"If the county has the power to take the public advantage into consideration at all, it has the right to base the conveyance entirely upon that as the moving consideration."

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Under the holding of the Arkansas cases, which are based upon statutes quite similar to those found in Missouri, the proposed undertaking by the State Park Board would be a valuable and sufficient consideration if the land has not been dedicated to a specific use. Therefore, the question would remain as to whether or not the land proposed to be transferred to the state would have been so dedicated, thereby making the holdings of the Arkansas cases inapplicable.

The case of Montgomery County v. Maryland-Washington Metropolitan District, 202 Md. 293, 96 A2d 353, involved the validity of a conveyance by a county to a planning commission for the establishment of recreational facilities. The land had previously been purchased by the county from the proceeds of a bond issue which provided that its proceeds "shall be used exclusively * * * for the purpose of acquiring by purchase or condemnation a new site or additional land upon which to construct a new office buildings to house necessary offices of the County Commissioners, quarters for the Montgomery County Police and other necessary county activities, and * * * for the purpose of building or constructing such building." The land was purchased but the particular tract involved had never been used for any such purposes. It does not appear from the report of the decision in the case whether or not the particular tract involved was an excess tract or whether it was the only area which had been purchased for the purpose and no further action taken regarding it. One of the questions before the court in the case was whether or not the property had been impressed with a public trust. With regard to that matter, the court stated, 97 A2d 357:

"Despite statements of counsel at the hearing in this court and in the brief of an amicus curiae, that there had been some public use of the Armory Lot as a playground, the Bill of Complaint alleges no public use for the original purpose of an office building site or for a playground or any other public purpose. This, however, is not the real basis of the County's contention. Its actual contention is that when the lot was bought with the proceeds of a bond issue authorizing a site, building and furnishings for county offices, this was sufficient to constitute a holding in public trust. It is asserted that such a trust cannot be terminated by sale or otherwise even when the lot is no longer required for the intended purpose, without special legislative sanction.

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"In 10 McQuillin, Municipal Corporations, par. 28.37, the general rule is laid down that land bought for a public use, if not actually so used, cannot be said to be affected by a public trust, and hence may be sold without special legislative authority. See Kings County Fire Ins. Co. v. Stevens, 101 N.Y. 411, 5 N.E. 353; Fussell-Graham-Alderson Co. v. Forrest City, 145 Ark. 375, 224 S.W. 745; Head-Lipscomb-McCormick Co. v. City of Bristol, 127 Va. 669, 105 S.E. 500, and cases cited by McQuillin."

The court then concluded that, inasmuch as there had been no public use of the land, it should not be regarded as being held in trust for a public use. Under this holding, if the land conveyed to the state should not have actually been used by the county for park purposes, the dedication for a particular purpose referred to in the Arkansas case would be held not to have occurred.

In the Maryland case the court upheld the validity of the conveyance and also considered the question of the sufficiency of the consideration. Again, in this case, it does not appear that any money was paid to the county. Regarding the consideration, the court stated, 96 A2d 1.e. 359:

"V. Nevertheless, an implied power to sell property is not an implied power to make a donative disposition. Consequently, the disposition, unless there is consideration for it, is an ultra vires act because there is no statutory power enabling the County to make a gratuitous disposition, and it has no such implied power. We must turn again to Art. 25, Sec. 10, which authorizes the County Commissioners ' * * * to establish and/or maintain, directly or by contract, reasonable facilities for the public recreation. This clearly empowers the County to contract for recreational facilities and the Planning Commission, a state instrument possessed of authority to establish such facilities, is an appropriate agency for this purpose.

"It is the Planning Commission's contention that its resolution and that of the County, made in 1944, respectively containing an offer and an acceptance, gave rise to a valid

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contract, the consideration for which was the Commissioner's agreement to establish recreational facilities either upon the land conveyed or other land, to be purchased with the proceeds of sale of the former, in the event it was sold. With this we are in accord.

"The form of the engagement between the County and the Commission is unexceptionable. That a public corporation may make a contract by resolution is a proposition for which there is ample authority. Illinois Trust & Savings Bank v. City of Arkansas City, 8 Cir., 76 F. 271, 34 L.R.A. 518; 10 McQuillin, sec. 29.10 (citing numerous authorities).

"There being a valid consideration to support the conveyance made by virtue of the County's implied power to dispose of the Armory Lot, it follows that the deed to the Commission was valid and it passed a title which now cannot be assailed."

There would appear to be another consideration with regard to the problem presented by you in the determination of whether or not the land had been so impressed with a public use as to prevent its transfer to the state. In the Arkansas case the property was conveyed to a nongovernmental agency. Here, however, the land would be conveyed to the state for the same use as upon the original ownership by the county. In the case of Los Angeles County v. Graves, 210 Cal. 21, 290 P. 444, the court upheld the transfer by a county of land acquired by it for park purposes to the state for use and development as a part of the state park system. Again, in that case it does not appear that any monetary consideration was received by the county on the conveyance. The court found some statutory authority for the transfer but further stated that authority would exist in the absence of a statute. In that regard the court stated, 290 P. 1.c. 445:

" * * * Then, again, subdivision 4 of section 4003 of the Political Code provides that a county has power to 'manage and dispose of its property as the interests of its inhabitants may require.' The counties are mere governmental agencies of the state, and the property intrusted to their governmental management is public property, the proprietary interest in

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which belongs to the public. If there be a legal title in the county, it is a title held in trust for the whole public. In the absence of constitutional restrictions, the Legislature has full control of the property so held by the counties as agencies of the state. Reclamation Dist. v. Superior Court, 171 Cal. 672, 679, 680, 154 P. 845, and cases cited. It would seem to follow, therefore, that no specific grant of power is necessary to enable a county to convey land held by it to the state. * * *

It is our thought that the fact that the land would be used by the state for the same purpose as originally planned by the county and for a purpose for which the county was authorized to purchase and make use of the land would distinguish the situation from that involved in the case of Hogge v. Rowan County Fiscal Court, 313 Ky. 387, 231 SW2d 8. In that case the court held that a county had no authority to purchase land and convey it to the state for the construction of a state police district headquarters. The decision was based on consideration of public policy, the court feeling that such offers to the state might result in the police force headquarters' being located at places which would not best suit the public convenience. The county would, of course, have had no authority to erect and operate a state police headquarters. Here, however, the county could have operated and maintained the park so that the county and the state would each make use of the land for the same purpose.

In view of the foregoing authorities, we feel that in the situation which you have proposed the land, upon the conveyance, would be held by the state for the benefit of the public for use as a public park and there would actually be no change in the character of the public use. Therefore, we believe that a conveyance by the county to the state of the property upon the undertaking by the State Park Board to develop and maintain the property for public park purposes would be a conveyance for an adequate and valuable consideration.

CONCLUSION

Therefore, it is the opinion of this office that the transfer of real property acquired by a county through the issuance of bonds

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for public park purposes to the State Park Board in return for the undertaking of the Board to develop and maintain the area as a public park would be supported by a valuable and adequate consideration.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Robert R. Welborn.

Yours very truly,

JOHN M. DALTON
Attorney General

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