

UNIVERSITY OF MISSOURI  
PROPOSED VOCATIONAL  
SCHOOL AT CAMP CROWDER

Proposed conveyance of real estate  
from Federal Government to Board of  
Curators of the University of Mis-  
souri for use as site for vocational

school, restricting same to that use for twenty-five year period,  
providing for semi-annual reports to War Assets Administration,  
providing against sale of property within twenty-five years of  
date of deed without consent of the United States, and providing  
for reversion to the United States in the event of violation by  
the Board of Curators of certain restrictions would convey abso-  
lute fee simple title to the Board of Curators within the meaning  
of "An Act to establish a Missouri State Vocational School", Laws  
Mo. 1947, pp. 364-365.

December 3, 1948



Mr. Leslie Cowan  
Vice-President and Secretary  
University of Missouri  
Columbia, Missouri

Dear Mr. Cowan:

This will acknowledge your recent letter in which you request  
an opinion of this department. Your letter is as follows:

"The 64th General Assembly passed an act au-  
thorizing the Board of Curators to acquire  
certain facilities at Camp Crowder, Missouri  
under certain definite conditions for the  
operation of a state wide Vocational School.  
We know this act as Senate Bill Number 282.  
We have been negotiating for some time with  
the officials of the War Assets Administra-  
tion in Washington about the transfer of  
this property to the University, and have  
recently secured a copy of the deed that the  
War Assets Administration is willing to give  
the University. I am enclosing a copy of  
this proposed deed and also a copy of a let-  
ter from the General Counsel of the War As-  
sets Administration, outlining the condi-  
tions under which the transfer will be made.  
The Board of Curators requests that you ex-  
amine the proposed deed and inform it whether  
or not, in your opinion, such deed and the

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procedure outlined in the General Counsel's letter will fulfill the requirements of the State law referred to above; thus, permitting the Board to accept title to the property."

You have also submitted for our information the letter from Mr. J. H. Joss, General Counsel to the War Assets Administration, in which he calls attention to the fact that it has been the policy of the War Assets Administration, firmly established and long adhered to, that in all disposals of property by that agency, the transferee must pay all external administrative expenses, including such items as cost of service, decontamination, inventorying and segregating personal property, etc. You have also submitted for our examination and consideration the form of deed submitted to you by the War Assets Administration which will hereinafter be set forth in part.

The question arising is whether or not a deed from the War Assets Administration to the Board of Curators, following the form submitted, would convey an absolute fee simple title to the real estate conveyed as required by Section 5 of an act establishing a Missouri Vocational School, Laws Mo. 1947, pp. 364-365.

Section 5 of the said act is as follows:

"This act shall take effect only in the event that the Board of Curators shall be able to acquire absolute fee simple title to the required property located at a site presently designated as Camp Crowder, Missouri, provided such title in fee simple shall be acquired not later than January 1, 1949, and without cost to the State of Missouri."

The relevant portion of the form of deed submitted by the War Assets Administration is as follows:

"WITNESSETH THAT:

"In consideration of the observance and performance by the \_\_\_\_\_ of the covenants, conditions, restrictions, and reservations, hereinafter set forth, and other good and valuable consideration, receipt of which is hereby acknowledged, the Government does by these presents remise, release and forever quit claim, subject to the covenant, conditions, restrictions and reservations hereinafter contained to the \_\_\_\_\_ and to its

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successors and assigns the following described property situated in the County of \_\_\_\_\_, State of Missouri, to-wit:

"DESCRIPTION

being (a part of) the same property acquired by the \_\_\_\_\_, the United States of America, \_\_\_\_\_ under

of record in

This conveyance is made and accepted upon each of the following conditions subsequent which shall be binding upon and enforceable against said party of the second part, its successors or assigns and each of them as follows:

FIRST: That for a period of 25 years from the date of this conveyance, said premises shall be continuously used as and for \_\_\_\_\_ (insert a short statement of proposed use) by \_\_\_\_\_) \_\_\_\_\_ and for incidental purposes pertaining thereto but for no other purposes.

SECOND: That for a period of 25 years from the date of this conveyance, the party of the second part, its successors or assigns shall file semi-annual reports with the War Assets Administration or its successor in function, setting forth its curricula and other pertinent use for the purposes first above set forth.

THIRD: That it will not resell or lease said premises within 25 years from the date of this instrument without first obtaining the written authorization of the War Assets Administration to such resale or lease.

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That in the event there is a breach of any of the above conditions by the party of the second part, its successors or assigns, whether caused by the legal inability of said party of the second part, its successors or assigns, to perform said conditions, or otherwise, during said 25 year period, all right, title and interest in and to the said premises shall, at its option, revert to and become the property of the United States of America which shall have the immediate right of entry upon said premises and the party of the second part, its successors or assigns shall forfeit all right, title and interest in said premises and in any and all of the tenements, hereditaments and appurtenances thereunto belonging;

PROVIDED HOWEVER, that the failure of the War Assets Administration, or its successors in function to insist in any one or more instances upon complete performance of any of the foregoing conditions subsequent shall not be construed as a waiver or relinquishment of the future performance of such condition, but the party of the second part's obligation with respect to such future performance shall continue in full force and effect; PROVIDED FURTHER that in the event the United States of America fails to exercise its option to reenter the premises for any such breach within 26 years from the date hereof, all of the foregoing conditions subsequent, together with all rights of the United States of America, to reenter thereon as hereinabove provided shall as of that date terminate and be extinguished.

IN THE EVENT the party of the second part, during the 25 year period first above referred to, replaces the temporary structures and improvements on the demised premises at the date hereof with permanent structures and improvements to be used for the same purposes as set out in condition numbered FIRST above, it may make application to the War Assets Administration or its successor in function for, and the latter may, in its discretion, abrogate the conditions subsequent together with all rights of re-entry hereinabove contained.

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The party of the second part may, during the said 25 year period, secure abrogation of the conditions subsequent together with all rights of re-entry hereinabove contained, by:

- a) Payment of the unamortized portion of the 100% public benefit allowance granted the party of the second part from the current market value of \_\_\_\_\_; which amortization shall be at the rate of 4% for each completed 12 months of operation in accordance with the terms of transfer; and
- b) Approval of the War Assets Administration, or its successor in function.

The party of the second part, by the acceptance of this deed, covenants and agrees, for itself, its successors and assigns that the United States of America shall have the right during the existence of any national emergency declared by the President of the United States of America or the Congress thereof, to the full unrestricted possession, control and use of the premises or any part thereof, including any additions or improvements thereto made subsequent to this conveyance, without charge EXCEPT THAT the United States of America shall be responsible during the period of such use, if occurring prior to \_\_\_\_\_ (insert date 25 years from date of deed), for the entire cost of maintaining the premises or any portion thereof so used and shall pay a fair rental for the use of any installations or structures which have been added thereto without federal aid; PROVIDED HOWEVER, that if such use is required after \_\_\_\_\_ (insert date 25 years from date of deed) or the party of the second part, its successors or assigns has secured the abrogation of the conditions subsequent together with all rights of re-entry as hereinabove provided, the United States of America shall pay a fair rental for the entire portion of the premises so used."

It appears to us that a properly executed deed, following the form submitted, would convey an absolute fee simple title to

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the Board of Curators within the meaning of the Missouri statute above quoted. It is our opinion that the title conveyed thereby would be a fee simple title upon conditions subsequent. In so holding we have considered the question as to whether or not the numerous restrictions contained in the contemplated deed constitute such limitations as are repugnant to an estate in fee simple.

We believe that the distinction to be drawn in considering this question is the distinction between limitations and conditions. The difference between a condition and a limitation is that a condition prescribed by a grant or devise does not defeat the estate when broken, unless it is avoided by the act of the grantor; whereas, a limitation marks the period which is to determine the estate without entry or claim by the grantor. (Smith v. White, 5 Nev. 405).

An examination of the form of deed above set forth reveals that the instrument provides that, upon the violation of certain named provisions thereof, the ownership of the land shall revert to the United States at the option of the United States. Said provision in said form of deed is as follows:

"That in the event there is a breach of any of the above conditions by the party of the second part, its successors or assigns, whether caused by the legal inability of the said party of the second part, its successors or assigns, to perform the conditions of otherwise during said 25 year period, all right, title and interest in and to the said premises shall, at its option, revert to and become the property of the United States of America, which shall have the immediate right of entry upon said premises, and the party of the second part, its successors or assigns, shall forfeit all right, title and interest in said premises and in any and all of the tenements, hereditaments and appurtenances thereunto belonging."

It should here be observed that under this provision, even in the event of the violation of said provisions or any of them, title does not automatically revert to the United States, but is reacquired by the United States only in the event that the said government sees fit to exercise its option to re-enter the land. Bearing the above-stated facts in mind, we now direct attention to the fact that the habendum clause of the deed is sufficient to grant a fee simple title to the Board of Curators if the covenants, conditions, restrictions and reservations to which such

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clause makes the conveyance subject are not repugnant to a fee simple title. In this connection we direct attention to the following quotation from said habendum clause:

"\* \* \* The government does by these presents remise, release and forever quit claim, subject to the covenants, conditions, restrictions and reservations hereinafter contained to the \_\_\_\_\_ and its successors and assigns, the following described property situate in the County of \_\_\_\_\_, State of Missouri \* \* \*."

We now point out that the use of the word "heirs" or other words of inheritance is not required in order to create a fee simple estate in Missouri, by reason of Section 3496, R.S.A. Mo. 1939, which so provides, nor is it necessary in a grant to a government, according to the provisions of the common law to use the word "heirs" or other words of inheritance. In this connection we quote Sec. 743, p. 435, Vol. 2 of Thomson on Real Property:

"The common law rule that the word 'heirs' or its equivalent was necessary in a deed in order to convey a fee, had no application when the grant was to the Crown. While the individual representing the sovereignty might change, the sovereign itself was immortal by perpetual succession; and, on principle, a life estate to an ideal being having a perpetual and uninterrupted existence must be co-extensive with a fee or perpetuity, and hence words of succession cannot extend it. So a deed to the government does not require words of succession or inheritance in order to pass a fee."

It is, of course, obvious that a deed to the Board of Curators of the Missouri State University is the equivalent of a deed to the State of Missouri. We, therefore, hold that the habendum clause of the form of deed submitted is sufficient to convey a fee simple title to the Board of Curators. Since this is true, we now come to the question as to whether the covenants, conditions, restrictions and reservations contained in the proposed deed are repugnant to the fee simple estate. We are of the opinion that such covenants, restrictions, conditions and reservations constitute only conditions subsequent, and that the title conveyed is a fee simple on conditions subsequent, since it is determinable in case of breach only at the option of the grantor and not by force of limitations fixed by the proposed deed.

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In this connection we must consider whether the 25 year restriction on alienation without the consent of the United States is repugnant to the fee simple title. Bearing on this question is the following pertinent quotation from Thompson on Real Property:

"An 'estate in fee simple' arises where one has an estate in lands or tenements to him, and his heirs forever, and such an estate is not inconsistent with a restriction on alienation". (Thompson on Real Property, Sec. 733, p. 427, Vol. 2.)

We now come to the question as to whether conditions subsequent generally are repugnant to the fee simple title. In this connection we quote as follows from Tiffany Real Property, Vol. 1, p. 308, Sec. 191:

"A condition subsequent may, be the common law authorities, be created on a transfer of a fee simple, \* \* it not being necessary that the transfer have a reversion in order to support the right of re-entry".

That this is the rule in Missouri is shown by the doctrine set forth in *Alexander v. Alexander*, 156 Mo. 413. In view of the very illuminating discussion of the immediate vesting of the fee simple estate, coupled with conditions subsequent, the breach of which may result in the divestiture of that title, we quote at length from the opinion of Judge Burgess in the last above-cited case. This was a case in which a father bequeathed a farm to his son and provided that the son should well and faithfully care for and support his mother as long as she should live. After the death of the testator, the son, not having supported his mother because she was amply provided for and did not need or request his support, predeceased his mother, and the son's heirs claimed that the will had vested a fee simple title in the son, descendable to them. This contention was sustained by the court. The following is quoted from the opinion:

"The conditions for the care and support of the devisee's mother 'as long as she shall live,' without charging the property with the performance of the conditions, 'would seem to be conditions subsequent, because of the implication that the devisee \* \* \* was to have possession and control of the premises for the purpose of fulfilling the conditions.' (*Morse v. Hayden*, 82 Me. loc. cit. 229.)

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"In *Finlay v. King's Lessee*, 3 Pet. loc. cit. 374, Chief Justice MARSHALL announces the rule with respect to estates as conditions precedent and subsequent to be as follows: 'There are no technical appropriate words which always determine whether a devise be on a condition precedent or subsequent. The same words have been determined differently; and the question is always a question of intention. If the language of the particular clause, or of the whole will, shows that the act on which the estate depends, must be performed, the devisee can take nothing. If, on the contrary, the act does not necessarily precede the vesting of the estate, but may accompany or follow it, if this is to be collected from the whole will, the condition is subsequent.' (*Burnett v. Strong*, 26 Miss. 116.)

"The conditions being subsequent, it must needs follow that the fee vested in the devisee immediately upon the death of the testator, and that the land descended to the plaintiff Florence on his death, subject to the rights of the devisee's widow therein under our statute, unless by reason of non-performance by him of the conditions of the will an estate to which he was previously entitled was divested. It should not, we think, be held that there was such a non-compliance with the conditions of the will during the lifetime of the devisee as to produce such a result, for the reason that his mother had a competency of her own, did not need support, but voluntarily supported the devisee and his family up to the time of his death, and never at any time requested him to care for and support her, and she must therefore be held to have waived the same as she unquestionably had the right to do.

"The conditions imposed upon the devisee to well and faithfully care for and support his mother, were of a personal character. That this was the view of the testator is clear from the provisions of the will, for if it had been otherwise, how easy it would have

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been for him to have provided in case of the death of the devisee before his mother, for her care and support by some other member of his family, or in the event of his failure to comply with the covenants that the land should go elsewhere.

"But he did not do this, and as by no act or omission of the devisee was his estate in the land divested during his lifetime, unless it was occasioned by his death, it then descended to his child, subject to the statutory rights of his wife, as before stated.

"In the case of *Burnham v. Burnham*, 79 Wis. 557, the testator by his will gave a certain sum to each of his children, and by a codicil thereto, declared that his son D. should not have nor receive any part, parcel, or interest in his estate, real or personal, unless within five years after the testator's decease, he should have reformed and become a sober and respectable citizen, of good moral character, and directed that if he did so reform, his executors should pay over to him one-half of the property bequeathed to him, and if he remained reformed for a further period of five years, pay over to him the other half thereof. D. died within eleven months after the death of his father. It was held that D.'s right in the estate vested in him immediately upon the death of his father, subject only to be divested by his failure to perform the conditions subsequent named in the codicil, which by his death were rendered impossible.

"In *Merrill v. Emery*, 10 Pick, 507, the testator gave to his wife one-half of all the money that he might leave in his house at the time of his death, together with all his family stores at that time on hand, upon the condition, that she would relinquish all her right to dower in his estate, and that she educate and bring up his granddaughter, M.L.R. The wife died seven days after the testator, without expressly waiving the provisions made for her in the will, or claiming dower. It

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was held, among other things, that the condition to educate the granddaughter was a condition subsequent, and that the legacy vested in the wife and the non-performance of this condition being occasioned by an act of providence, did not divest the legacy.

"In *Richards v. Merrill*, 13 Pick. 405, the same will was again before the same court for construction, and it was held, Chief Justice SHAW delivering the opinion of the court, that by the terms of the will the obligation imposed upon the testator's widow was one of parental care towards the granddaughter which died with the widow.

"Our conclusion is that the fee to the land vested in the devisee under the will immediately upon the death of the testator, that the conditions imposed upon the devisee by the will to 'well and faithfully care for and support his mother' were conditions subsequent, which were not broken by him during his lifetime, and from which he was absolved by death."

We here comment that the form of deed, submitted by the United States Government, here under consideration, as hereinbefore demonstrated, uses such language as would vest fee simple title in the grantee, and specifically provides that the conditions set forth therein are conditions subsequent. We are, therefore, of the opinion that under the doctrine of the opinion last above quoted, such a deed if executed would undoubtedly vest a fee simple title upon conditions subsequent in the Board of Curators, the grantee.

Since we have reached the conclusion that such a deed would convey a fee simple title on conditions subsequent to the grantee, we must now consider the question as to whether such fee simple title would be an absolute fee simple title within the meaning of the 1947 statute, supra. We advert to the fact that said statute contains a provision against its becoming effective unless the Board of Curators is able to acquire an absolute fee simple title to the land in question before January 1, 1949. We are of the opinion that a properly executed deed, following the form submitted, would convey to the grantee an absolute fee simple title within the meaning of said statute. We hold that since the title conveyed is a fee simple title, it is an absolute fee simple title because there is no distinction under the law between a fee, a fee simple and an absolute fee simple.

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In this connection we consider pertinent the following quotation from Thompson on Real Property, Vol. 2, p. 426, Sec. 733:

"\* \* \* a fee simple estate is an estate of inheritance which is unconditional, indefeasible, and absolute, and which descends to the owner's heirs generally and not merely to a particular class of the owner's heirs as in the case of a fee tail. The word 'absolute' added does not impart anything to the legal effect of the term 'fee' or 'fee simple'".

The same truth is expressed in Jecko, Trustee of Hume et al. v. Taussig, 45 Mo. 167, in the following words:

"The deed authorizes a conveyance in 'fee'. Much stress is laid upon the distinction which is supposed to exist between an estate in 'fee' and an estate in 'fee simple absolute.' It is urged that a right to convey in 'fee' does not necessarily give the right to convey in 'fee simple absolute.' The distinction in question may have once existed and had practical force and importance in England. In this country, however, it is apprehended that such distinction has become dim and shadowy, at least in the general mind. The term 'fee' implies an inheritable estate, and the addition of the word 'simple,' forming the compound word 'fee simple,' as used in 'modern estates' and conveyancing, adds nothing to the force and comprehensiveness of the original term. (1 Washb. on Real Prop. 65-6.) And Mr. Washburn says that a 'fee simple is the largest possible estate which a man can have in lands, being an absolute estate in perpetuity;' and further, that 'an estate in fee simple conveys at once the idea of an interest of unlimited duration.' (Id. 59, 66.) Nor does the addition of the term 'absolute,' as 'fee simple absolute,' add anything to the force and meaning of term 'fee' or 'fee simple.' (Id.) In modern estates these several terms, 'fee,' 'fee simple,' and 'fee simple absolute' are substantially synonymous.

"It is nevertheless true that an estate in fee simple may be granted in such way and

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upon such conditions that it may be defeated  
by the happening of some future event.\* \* "

We are of the opinion that under the doctrine above set forth, which prevails in the State of Missouri, every "fee simple estate" is an "absolute fee simple estate" and that since we hold that the estate that would be conveyed by the proposed deed would be a "fee simple estate", it would be an "absolute fee simple estate" within the meaning of the above quoted statute for the reason that terminology used by the Legislature in the enactment of the law is presumed to be used in the light of the meaning given to that terminology by the court decisions of the State.

The later Missouri case of *Bevins v. Smith*, 104 Mo. 583, l.c. 601, also holds that the terms "fee", "fee simple" and "fee simple absolute" may be used interchangeably, and quotes Tiedeman on Real Property in support of such holding.

#### CONCLUSION

We are, therefore, of the opinion that if the Board of Curators shall, before January 1, 1949, accept a conveyance of the land involved by a properly executed and delivered deed, following the form submitted and quoted above, the said Board will acquire an absolute fee simple title within the meaning of the Act "establishing a Missouri State Vocational School", Laws Mo. 1947, p. 364 and 365, provided the said conveyance shall be accomplished without cost to the State of Missouri.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General