

Lessor and Lessee, Rights of. Buildings, Lease of. Court-house, Lease of Building for. Lease, of Building for County Court House. Appurtenances to Leased Building, What Are.

The lease of a building for any purpose except dwelling house, does not carry with it a warranty that the property is suitable for the purposes for which leased. The rule of caveat emptor applies.

By the lease of a building, everything which belongs to it, and which is reasonably essential to its enjoyment, passes as incidental to the principle thing.

March 13, 1915.

Hon. Charles L. Crum,
District Judge,
Forsyth, Montana.

Dear Sir:

I am in receipt of your letter of the 8th instant, relating to controversy between Big Horn County and Mr. James S. Sullivan, concerning property leased by the county from Mr. Sullivan for county purposes. The question appears to be as to what rights the county has in certain appurtenances to the building. I find the general rule to be as expressed in *Riddle vs. Littlefield*, 53 N. Ham. 503, 16 Am. Rep., 358, in which it is said:

“By the lease of a building, everything which belongs to it and which is reasonably essential to its enjoyment passes as incidental to the principal thing, and as a part of it, unless especially reserved.”

This is also the general rule laid down in 24 Cyc., at page 1046. If the privileges which the county now claims are appurtenant to the building at the time of the lease, there is not any doubt but what the lessee has the right to these privileges, because the lease does not especially reserve any such rights, and they would pass, unless reserved.

This, however, would not necessarily extend to or be decisive of the question as to whether it was the duty of the lessor either to enlarge or maintain these privileges at his own expense. Aside from dwelling house property, there does not appear to be any implied warranty that the premises leased are suitable for the purposes. This also seems to be a general rule.

York vs. Stewart, 21 Mont. 515, 24 Cyc, 1047.

But whatever may be the determination upon a trial of this latter question, if these privileges claimed by the county, were in effect a part of the building at the time it was leased, or used in connection therewith, and owned by the lessor, the right to such use would pass to the county, and the lessor would have no legal right under his lease to deprive the county of these rights. Leasing the building to the county for county purposes, and for district court purposes is a lease to the public, and confers upon all persons transacting the business of the

county the right to all privileges granted by or included in the lease. Otherwise, the business of the county and especially of the court, would be seriously interfered with.

Yours very truly,

D. M. KELLY,

Attorney General.