

SCHOOLS:  
SCHOOL DISTRICTS:

The sale of a school building by the board of education of a reorganized school district without having advertised the same in accordance with Section 165.370, RSMo. 1949, is invalid.



February 19, 1954

Mr. Donald B. Russell  
Prosecuting Attorney  
Vernon County  
Navada, Missouri

Dear Mr. Russell:

We render herewith our opinion based upon the following request received from you:

"I would like an opinion from your office as to the sale of school sites abandoned by a reorganized school district. One of the reorganized school districts of this county recently sold several school buildings and sites which were no longer needed by the new reorganized district. One of the buildings and sites, in particular, was sold privately with no notice or advertisement of any kind.

"The only statute which I find to be applicable is Section 165.370 of the Missouri Revised Statutes of 1949 which provides 'that whenever there is within a district a school property that is no longer required for the use of the district the board is authorized to advertise, sell and convey the same.' This seems to require an advertisement of a sale and it would seem to follow that a failure to advertise would make the sale by the board void."

The authority of a reorganized school district to sell the school building is based upon this portion of Section 165.687 RSMo. 1949:

"The directors above provided shall be governed by the laws applicable to six-director school districts."

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We turn, then, to the laws relating to six-director districts, and particularly Section 165.370 RSMo. 1949, the pertinent part of which reads as follows:

" \* \* \* whenever there is within the district any school property that is no longer required for the use of the district, the board is hereby authorized to advertise, sell and convey the same, and the proceeds derived therefrom shall be placed to the credit of the building fund of such district."

It is a well-known principle that a school district must point to a specific statute to justify its every act. It has no authority beyond that given it by statute. In *State vs. Kessler, et al*, 117 S.W. 85 at l.c. 86, the court said:

"The board of directors of the school district is a body clothed with authority to discharge such functions of a public nature as are expressly prescribed by statute. It can exercise no power not expressly conferred or fairly arising by necessary implication from those conferred."

And in *Wright vs. Board of Education*, 295 Mo. 466, 246 S.W. 43, 27 A.L.R. 1061, the court said at S.W. l.c. 45:

"The power of the board to make the rule in this case is to be considered prior to a determination of its reasonableness. The power delegated by the Legislature is purely derivative. Under a well-recognized canon of construction, such powers, however remedial in their purpose, can only be exercised as are clearly comprehended within the words of the statute or that may be derived therefrom by necessary implication; regard always being had for the object to be attained."

Also see 47 Am. Jur., Schools, Section 42.

There is no question the board has the power to sell the school buildings, having determined that they are no longer required for the use of the district. The question is: What is the effect of its not having advertised the buildings before selling, as required by the above quoted Section 165.370 RSMo. 1949? Our answer is that it renders the sale invalid.

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In re Farmers & Merchants Bank of Chillicothe, 63 S.W.2d 829, the court said (S.W. l.c. 830):

"The school district did not have power to sell its property or authority to dispose of its public revenue save in the manner provided in chapter 57, R.S. Mo. 1929 (section 9194 et seq. (Mo. St. Ann. Sec. 9194 et. seq., p. 70661). An examination of the applicable statutes discloses that the Legislature did not intend to invest the board of directors of a school district with authority to execute an instrument such as the one here involved."

This case indicates that Missouri recognizes the rule stated in 47 Am. Jur., Schools, Section 43:

"And school boards come within the general rule that where a power is given to do an act, and the particular method by which that power is to be exercised is pointed out by statute, the mode is the measure of the power."

For that proposition is cited Barton vs. School District, 77 Oregon 30, 150 P. 251, Ann. Cas. 1917(a) 252. Holding invalid a contract to hire a teacher, which contract had been signed by the directors individually and not in a meeting of the directors as required by statute, the court said at P. l.c. 252:

"It is a principle settled by numerous decisions that where a power is given to a corporation to do an act, and the particular method by which that power is to be exercised is pointed out by statute, the mode is the measure of the power. Here the power or duty to employ teachers is prescribed, and the particular method by which that power shall be executed is also pointed out, and not only is this the case, but the statute adds the mandatory words:

'Any duty imposed upon the board as a body must be performed at a regular or special meeting, and must be made a matter of record.'

#### CONCLUSION

It is the opinion of this office that the sale of a school building by the board of education of a reorganized school district

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without having advertised the same in accordance with Section 165.370, RSMo. 1949, is invalid.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Don Kennedy.

Very truly yours,

John M. Dalton  
Attorney General

WDK/vtl