

SCHOOLS:
CONSTITUTIONAL LAW:

A school district is authorized to allow the use of school premises by church or religious organizations for religious purposes during times when the use for school purposes is not required provided that a fair and adequate consideration is received for such use.

OPINION NO. 82

September 2, 1970

Honorable Richard M. Marshall
Representative 43rd District
111 South Bemiston Avenue
Clayton, Missouri 63105



Dear Representative Marshall:

This opinion is in response to your request in which you inquire whether a school district can make an agreement with an organized church allowing the church to use the school auditorium and several school classrooms for religious purposes on certain evenings in return for which the church pays a fee to the school authorities covering only the expenses of maintenance and janitorial services.

We have previously issued Opinion No. 265, dated October 30, 1969, to Ronald Reed, Jr., which held that a public school board may not allow the use of public school property by the Ministerial Alliance to conduct religious training. In that instance, there was no fee or charge paid for the use of the premises.

In our Opinion No. 158 dated August 22, 1967, to Don Witt, this office held that a public school board may allow the use of public school property by a church college or municipality for civic, social and educational purposes that do not interfere with the prime purposes of the school property and that where there is an exchange of consideration between the public school district and the church-educational institution there is no aid to religion.

In our Opinion No. 354, December 19, 1968, to Ben Morton, this office held that an agency of the state government may be authorized by the legislature to contract and cooperate with private medical schools for the purpose of training Missourians in the medical profession.

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In our Opinion No. 81, of August 25, 1952, to Major General A. B. Sheppard, this office held that the State of Missouri may execute a "Right of Entry, Use and Occupancy" of certain buildings to the archdiocese of St. Louis for the use of the certain buildings located at Jefferson Barracks.

We have enclosed copies of the above cited opinions for your information.

The constitutional prohibitions against the support of religion are contained in several sections. Article I, Section 6, states:

"That no person can be compelled to erect, support or attend any place or system of worship, or to maintain or support any priest, minister, preacher or teacher of any sect, church, creed or denomination of religion; but if any person shall voluntarily make a contract for any such object, he shall be held to the performance of the same."

Article I, Section 7, states:

"That no money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect or denomination of religion, or in aid of any priest, preacher, minister or teacher thereof, as such; and that no preference shall be given to nor any discrimination made against any church, sect or creed of religion, or any form of religious faith or worship."

Article IX, Section 8, states:

"Neither the general assembly, nor any county, city, town, township, school district or other municipal corporation, shall ever make an appropriation or pay from any public fund whatever, anything in aid of any religious creed, church or sectarian purpose, or to help to support or sustain any private or public school, academy, seminary, college, university, or other institution of learning controlled by any religious

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creed, church or sectarian denomination whatever; nor shall any grant or donation of personal property or real estate ever be made by the state, or any county, city, town, or other municipal corporation, for any religious creed, church, or sectarian purpose whatever."

It is recognized that a school district is a body corporate with power to own and sell real estate. Feeler v. Reorganized School District No. 4, 290 S.W.2d 102 (Mo. 1956). It follows that the school districts have the power to allow the use of premises under their control.

When, in fact, a religious organization pays a fair consideration for the use of premises, there is no aid, support or advancement of any religious establishment. To conclude otherwise would in fact be discrimination against religious bodies which is prohibited by Section 7 of Article I of the Missouri Constitution.

We cannot speculate as to what might constitute "adequate consideration" in all circumstances. If other facilities are available in the community for rental, then the rental customarily charged for the use of such facilities would be of some assistance in determining what constitutes adequate consideration. In some instances, there might be adequate consideration if the school districts were relieved of the burden of the expenses which it would otherwise have. The decision as to what constitutes adequate consideration is vested in the district; and presumably such exercise of discretion will take into consideration all relative and available information.

If the consideration is just and adequate when all the circumstances are considered, there is no gift or subsidy to a religious organization. Kintzele v. City of St. Louis, 347 S.W.2d 695 (Mo. En Banc 1961).

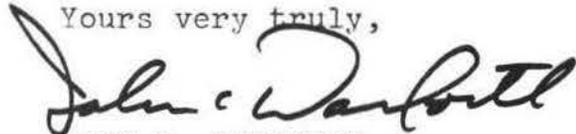
CONCLUSION

It is therefore the opinion of this office that a school district is authorized to allow the use of school premises by church or religious organizations for religious purposes during times when the use for school purposes is not required provided that a fair and adequate consideration is received for such use.

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The foregoing opinion, which I hereby approve, was prepared by my assistant, John C. Klaffenbach.

Yours very truly,



JOHN C. DANFORTH
Attorney General

Enclosures: Op. No. 265
10-30-69, Reed

Op. No. 158
8-22-67, Witt

Op. No. 354
12-19-68, Morton

Op. No. 81
8-25-52, Sheppard