

COMMON SCHOOL DISTRICTS: Authority to erect additional school building out of building fund.

July 11, 1935.



Hon. N. Elmer Butler  
Prosecuting Attorney  
Stone County  
Galena, Missouri

Dear Sir:

We wish to acknowledge your letter of recent date wherein you state as follows:

"Please give me opinion on the following:

"Is it legal for the board of directors of a common school district to use the building fund to erect an additional school building in a different place in the district, from the old building at the center of the district?"

"Perhaps, my request would be more easily understood if I should give you the circumstances.

"The common school, in question, has had enrollment enough for two teachers and for the next year they will have enough for three. Is it permissible for the board to use the building fund to erect an additional school house in another part of the district for the third teacher?"

Section 9884, R. S. Mo. 1929, deals with laws applicable to common schools and provides in part as follows:

"The qualified voters assembled at the annual meeting, when not otherwise provided, shall have power by a majority

of the votes cast: \*\*\*\*

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"Eleventh -- To change the location of schoolhouse site when the same for any cause is deemed necessary: Provided, that in every case a majority vote of the voters who are resident taxpayers of said district shall be necessary to remove a site nearer the center of said district; but in all cases to remove a site farther from the center of said district, it shall require two-thirds of the legal voters who are resident taxpayers of such school district voting at such election. (R. S. 1919, Section 11210)."

The above section relates to procedure necessary to change the location of a school house and places the power specifically in "the qualified voters assembled at the annual meeting." However, in enumerating the powers of the "qualified voters" nothing is said as to their power "to erect an additional school building in a different place in the district from the old building at the center of the district." We must, therefore, look to the "laws applicable to all classes of schools" to determine where the authority is vested to erect an additional school building.

Section 9198, R. S. Mo. 1929, (Section 11127, R. S. 1919) provides in part that,

"For the purpose of purchasing schoolhouse sites, erecting schoolhouses (library buildings) and furnishing the same, and building additions to or repairing old buildings, the board of directors shall be authorized to borrow money, and issue bonds for the payment thereof, in the manner herein provided. \*\*\*\*."

Section 9205, R. S. Mo. 1929 (Section 11134, R. S. Mo. 1919) provides in part that,

"The board of directors or board of education shall have the care and keep-

ing of all property belonging to the district. \*\*\*\*\*

Section 9207, R. S. Mo. 1929 (Section 11135, R. S. 1919) provides in part that,

"The board shall have power to make all needful rules and regulations for the organization, grading and government in their school district -- \*\*\*\*\*."

In the case of State ex rel. Whitehead v. Wenom, 326 Mo. 352, 1. c. 361, the Court in interpreting the before set-out sections said:

"Under the statutes of this State (Secs. 11127, 11134, and 11135, R. S. 1919), the school boards, and they alone, are entrusted with the duty of providing and maintaining school facilities, including sites, schoolhouses and furnishings. The methods and means to be employed in the discharge of these functions are committed wholly to their judgment and discretion. It is unnecessary therefore for them to submit to the electorate the question as to whether, under a given situation, they shall increase the housing facilities of the school district by erecting one new building, or more than one, or the question as to where such building or buildings shall be located. The only thing that they are required to go to the taxpayer for is authority to borrow money (or to increase the tax-rate). With respect to this 'the question of loan shall be decided at an annual school meeting or at a special election to be held for that purpose.'" (Sec. 11127)'. "

Although the Wenom case, supra, deals with consolidated school districts, we are of the opinion that the sections above interpreted apply as well to the common school districts with the exception that in the case of the latter the question as to where the building shall be located is determined by the "qualified voters assembled at the annual meeting". When the question therefore arises in the common school district as to

the increase of housing facilities by erecting a new building, we are of the opinion that such a decision is left wholly to the judgment of the school board or board of directors. Such vital matters, however, as authority to borrow money or to increase the tax rate must be decided by the taxpayer so that the latter in final analysis would have the last word.

Section 9311, R. S. Mo. 1929, dealing with laws applicable to common schools provides for a "building fund" thus:

"Upon the order of the board of directors, it shall be the duty of the district clerk to draw warrants on the county treasurer in favor of any party to whom the district has become legally indebted, either for services as teacher, for material purchased for the use of the school, or material or labor in the erection of a school-house for said district -- the said warrant to be paid out of any moneys in the appropriate funds in the hands of the said treasurer and belonging to the district. The species of indebtedness must be clearly stated and should be drawn on its appropriate fund; all moneys for teachers' wages on the teachers' fund; all moneys used in the purchase of a site, erection of building thereon, and furnishing the same, on building fund; and all other expenses to be paid out of the incidental fund: \*\*\*\*\*"

From the foregoing, we are of the opinion that if in the judgment of the board of directors of the common school district another building is necessary in addition to the old building at the center of the district, the board may use the "building fund" to erect same but with the reservations above outlined.

Respectfully submitted,

APPROVED:

WM. ORR SAWYERS  
Assistant Attorney-General.

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ROY MCKITTRICK  
Attorney-General.

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