

SCHOOLS:

Rural school districts may condemn property adjacent to a school for playground purposes.

June 6, 1938

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Mr. Wayne V. Slankard,
Prosecuting Attorney,
Newton County,
Neosho, Missouri.

Dear Sir:

This will acknowledge receipt of your request dated May 18, 1938 for an official opinion from this department which is as follows:

"Does a common school district have the right to condemn, 'additional grounds adjacent to the schoolhouse site or sites.' The reason I ask for this, particularly, is that it has occurred to me that the part of Section 9215 R.S. Mo. 1929, which reads as follows: 'or the board of education in city, town or consolidated school districts under the provisions of the statute applicable thereto, shall locate, direct and authorize the purchase of sites for schoolhouses, libraries, offices and public parks and playgrounds, or additional grounds adjacent to schoolhouse site or sites,' applies only to city, town and consolidated school districts and that the only rights to condemn, granted by this section to common school districts, is the right to condemn for an original site or sites or a new site or sites but not for additional land for playground

purposes even though it might be adjacent to the present site.

As further grounds for this thought, Section 9422 grants to city, town and consolidated districts, or rather to the board of education of such districts, the right to purchase, 'sites for schoolhouses, libraries, school offices and public parks and playgrounds adjacent to the schoolhouse site or elsewhere in said district;' but I have been unable to find any authority for a common school district to purchase lands in addition to the site or adjacent to the site for playground purposes unless the word 'site' as used in Section 9215 is construed to mean not only the original tract of ground where a schoolhouse is located but also any additional land which in the opinion of the district, expressed by their vote, may be necessary for playground purposes. It strikes me that unless this broad meaning is given to the word 'site', that a common school district would have no right to either purchase or condemn land except for an original school site or sites or a new site or sites and if this is true, this situation might arise: Suppose a new district were given a half acre of land for a school site and a deed was made to the board of directors, as Trustees to hold the same, and the district desired an acre of land for the school site. In this case the district already owns a site and yet it needs and desires a half acre additional for playground purposes. Unless the word 'site' is construed in its broad sense in this situation the board would have no right, as I see it, to condemn this additional land.

I have been unable to find any Missouri case touching on the point I have attempted to explain, however, in 'Words and Phrases,' third series, I found the following, taken from Board of Education v. Forrest, 130 S. E. 621, 190 N. C. 753: 'Where the board of education selected certain lots for a school site at the same time, but could not purchase one of them at the time the others were purchased, held that under C. S. Section 5416, and C. S. Supp. 1924, Section 5469, authorizing the board to acquire title to suitable 'sites' it could thereafter condemn the lot which it could not purchase, for purposes of playground, since in such matters the board is acting in exercise of a discretion with which Courts seldom interfere; the word 'site' within Section 6459 being broad enough to embrace such land not exceeding statutory limit as may reasonably be required for suitable and convenient use of a particular building, and land taken for playground in conjunction with the school may be as essential as land taken for the school house itself.'

On May 16th this department rendered you an opinion in acknowledgment of your request dated May 12, 1938, for an opinion regarding the condemnation of additional sites for schoolhouses. In answer to your second request in regard to this matter dated May 18, 1938, this department still believes the opinion dated May 16, 1938 covers the matter of the question in your letter of May 12, 1938. Section 9215, R.S. Mo. 1929 reads as follows:

"Whenever any district shall select at the annual or any special meeting, one or more sites for one or more schoolhouses, or the board of education in city, town or consolidated school district, under the provisions of the

statute applicable thereto, shall locate, direct and authorize the purchase of sites for schoolhouses, libraries, offices and public parks and playgrounds, or additional grounds adjacent to schoolhouse site or sites, and cannot agree with the owner thereof as to the price to be paid for the same, or for any other cause cannot secure a title thereto, the board of directors, or board of education aforesaid may proceed to condemn the same in the same manner as provided for condemnation of right of way in article 2, chapter 7, R.S. 1929, and upon such condemnation and the payment of the appraisement, as therein provided, the title of said lot or land shall vest in the board of directors or board of education aforesaid for use in trust for the district and the purposes for which the same was so selected and located. All laws or parts of laws in conflict with this law are hereby repealed."

This section is not ambiguous and really needs no construction. All that is necessary is to give the ordinary meaning to each word or expression in the statute. According to the rules of construction where a statute is susceptible of two or more meanings, the court will adopt that interpretation most in accord with the manifest purpose of the statute as gathered from the context. This was so held in *O'Malley v. Continental Life Insurance Company*, 75 S.W. (2d) 835, l.c. 839, where the court said:

"The legislative intent in the enactment of the law is to be sought and effectuated. This is the rule of first importance in statutory interpretation. To ascertain such intent we invoke as aids such of the auxiliary rules of interpretation as may seem to bear with incidence as direct as may be upon the matter in hand. Briefly

stated, these in substance recognize and require that the language of the act be considered (25 R. C. L., Section 216, p. 961); that each word be accorded its ordinary meaning, generally speaking; and that in construing a word or expression of a statute susceptible of two or more meanings the court will adopt that interpretation most in accord with the manifest purpose of the statute as gathered from the context."

Section 9215 was Section 11143 in the Revised Statutes of 1919. That provision provided that "any school district", if it needed additional grounds for school purposes or for public parks and playgrounds, could, upon a vote of a majority of the qualified voters, condemn land adjacent to the schoolhouse site. The clause "or additional ground adjacent to schoolhouse site or sites" found in the 1929 statutes was not in the 1919 provision. In State ex rel. v. School District, 310 Mo. 258, 274 S.W. 1073, the court reiterated its holding of School District v. Cellien, 209 Mo. 464, in which it was held that the majority mentioned in the 1919 provision meant the majority of all the qualified voters in the district and not just those who vote. The Legislature, realizing the oppressive consequences of such a statute, eliminated the provision as to the vote on the question of whether adjacent land could be acquired or not, and placed such right in the Board of Directors by inserting the phrase "or additional grounds adjacent to schoolhouse site or sites".

The clause last quoted was to take the place of the part that was eliminated and was to apply to "any school district". Therefore, that clause, as found in Section 9215, applies to the first part thereof, that is, "whenever any district shall select at the annual or any special meeting one or more sites for one or more school districts", as well as to the latter clause.

This Section 9215, supra, which may be said to be indefinite is very clear and unambiguous if the clauses

and words are taken and used in their natural meaning.
This section reads:

"When any district shall select, at the annual or any special meeting one or more sites for one or more schoolhouses,"* * * * *

is a phrase in the section which sets out the place and time of the meeting for the purpose of obtaining sites for one or more schoolhouses, the section further goes on to say:

"* * * * or the board of education in city, town or consolidated school district, under the provisions of the statute applicable thereto, shall locate, direct and authorize the purchase of sites for schoolhouses, libraries, offices and public parks and playgrounds,"* * * * *

is a phrase which sets out the time and place and procedure under which they shall locate, direct and authorize the purchase of sites for a schoolhouse. The two phrases above set out merely describe the two different places and times of the two different forms of school districts that shall authorize the following: selection by any school district of one or more sites or additional grounds adjacent to schoolhouse site or sites or the board of education of any city, town or consolidated school district shall locate, direct and authorize the purchase of sites, or additional grounds adjacent to schoolhouse site or sites.

In other words, the Section 9215, supra, as construed means first, who, and it describes the two distinct forms of school districts, one being any district at the annual or special meeting; the other being school districts, such as, boards of education in cities, towns or consolidated school districts: "shall select, locate and authorize the purchase of additional grounds adjacent to schoolhouse site or sites."

Mr. Wayne V. Slankard

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CONCLUSION

In view of the above authorities and the authorities as set out in the official opinion from this office in reference to the same matter requested by you on May 12, 1938, will say that it is the opinion of this department that Section 9215, R.S. Mo. 1929, authorizes any district at the annual or special meeting of said district to purchase additional grounds adjacent to schoolhouse site or sites and if unable to agree with the owner the board of directors or board of education aforesaid may proceed to condemn the same in the same manner as provided for condemnation of right of ways in Article II, chapter 7, R.S. Mo. 1929.

Respectfully submitted,

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APPROVED:

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