

SCHOOLS:
BOARD OF DIRECTORS:
SCHOOL SITES:

Board of directors are not authorized to
change the school site without consent
of the voters.

April 10, 1939



Mr. Gene Thompson
Prosecuting Attorney
Oregon, Missouri

Dear Sir:

This is in reply to your letter wherein you request
an opinion on the following statement:

"May a school board grant a right-of-
way of a portion of a school building
site for a state road?

"In this particular instance it would
require the moving of the building to
another location within the present
site, more adjoining land will be added
to the present site so the amount of
land will be as much as at present.

"Can the school board make this grant
without submitting the proposition to
the vote of the district at the annual
meeting, under the opinion on page 284,
Revised School Laws of 1931?"

We assume that the school district to which you are
referring is a common school district and will treat this
opinion accordingly.

The school board is a creature of the statute and it
must look there for its authority. In our research on the
question of the authority of the board to dispose of dis-
trict properties, we find in the case of Farmers' and
Merchants' Bank v. Chula School Dist. No. 16 et al., 63
S. W. (2d) 829, 830, by a recent opinion, the court said:

"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. 7066)). 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. * * "

By granting a portion of the district property for a right-of-way, we think this act would come within the classification of disposing of district property, the use of which the district no longer requires. For authority to do this act we think that the board of directors must look to the electors of the district. We are supported by this view by subsection 7 of Section 9284, R. S. Mo. 1929, which is as follows:

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

"Seventh--To direct the sale of any property belonging to the district but no longer required for the use thereof, to determine the disposition of the same and the application of the proceeds."

It will be seen by this subsection that the lawmakers did not intend for the board of directors to dispose of any of the property of the school district unless authorized by a vote of the electors of the district.

This question also arises in your request and that is what sort of a title does the district hold to the school district. In considering the question, we are also assuming that the district holds the title in fee to these lands in

which case the electors have authority to dispose of it as they may deem proper, however, if the district holds the land for school purposes only, then the rule would be otherwise.

This opinion is also limited to cases in which only a portion of the school properties are disposed of. If the district proposes to abandon a certain school site, then Section 9269, R. S. Mo. 1929, applies which would prohibit the abandonment of the site until another site is provided.

You state in your request that by making the change suggested it would necessitate the moving of the school building to another location on the present site and the acquisition of additional lands. We assume that you intend to expend district funds for the purpose of carrying out these acts.

These are additional reasons why we think that the lawmakers have intended that such matters be submitted to the voters.

In case the right-of-way for a road is granted and in case additional grounds are added to the present site we think that this would be in effect changing the site of the school as contemplated by subsection 11 of Section 9284, R. S. Mo. 1929, which question is authorized to be voted upon at an annual school meeting, and subsection 11 is as follows:

"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."

In speaking of the powers of the voters of a common school district as to the location of the schoolhouses, the Supreme Court, in *State ex rel. v. Jones*, 155 Mo. l.c. 576, said:

"The statute vests in the qualified voters of the district of country districts, and in the directors of the city districts, full and complete discretion as to the location of the school houses (sec. 7979, 8001 and 8085, R.S. 1889), and in the directors the power to sell school property no longer needed for the use of the district (secs. 8088 and 8878, R.S. 1889)." (In this case the sections of the statute referred to were cited, one of which is now Section 9284, R. S. Mo. 1929)

On the question of what is a schoolhouse site, we find the term defined in the case of *Board of Education of Oklahoma City v. Woodworth*, 214 P. 1077, *Words & Phrases*, Vol. 6, Third Series at page 968:

"The term 'school site,' in its common acceptation, and as commonly understood, refers to a parcel of ground sufficient in size upon which to erect a school building, and a yard surrounding the same to be used as a playground for the children while at school."

The term "site" or the words "location and site" in *Words & Phrases*, Second Series, page 177, are frequently used in the same sense. The case of *Board of Supervisors v. Essex County*, 96 N. Y. Sup. 840, 842, holds to this effect.

In our research on the question of whether or not the change of a boundary line of a district would be the changing of the site of the district, we find no cases in Missouri on this question, but we find one case, namely, *Holbrook v. Faulkner*, 55 N. H. 311, 315, wherein such a question was under consideration by the court. In that case it seemed that a board of county commissioners acquired jurisdiction

of a case concerning school district property when a change of the location of the district was involved. In that instance it seems that certain lands had been added to straighten the west line of the schoolhouse property and the court held that the commissioners had jurisdiction of that case on a petition to change the location. In other words, it held that the acquisition of additional lands for the purpose of straightening the boundary line of the district was such a change of location of the district property that the county commissioners had jurisdiction to hear the petition.

So in your question, by adding lands to the district as you propose will be done in case the board is authorized to convey the right-of-way, then we think such act would come within the classification of changing the location of the schoolhouse site which must be authorized only by a vote of the electors of the district. On the powers of a board of directors, we find that the court, in the case of *Buchanan v. Hannibal School District*, 25 Mo. App. 85, 88, said:

"* * * * The powers of the corporation itself, as well as the powers of its directors, are minutely prescribed and limited by law. Not the directors, but the entire corporate body, is constituted the judge of the necessity, or propriety, of changing a school site. The statute provides that: 'The qualified voters assembled at the annual meeting, when not otherwise provided by law, shall have power * * * Eleventh, to change the location of a school house site, when the same, for any cause, is deemed necessary, provided that, in every case, a majority vote of the voters of said district shall be necessary to remove a site nearer to the center of the district, but in all cases to remove a site further from the center of said district it shall require two-thirds of the legal

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voters of said school district.'
Laws 1883, 185, 186. It is nowhere
otherwise provided by law, and that
is, therefore, the sole mode in which
it can be done. * * * * *

CONCLUSION.

From the foregoing it is the opinion of this department that the board of directors of common school districts may not convey a part of the school site for right-of-way purposes or change the location of the present school site without being authorized to do so by a proper vote of the electors of the district.

Respectfully submitted

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APPROVED:

J. E. TAYLOR
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