

SCHOOLS: Board of education in town, city and consolidated districts does not have authority to accept anything but cash at sale of school property.

September 2, 1942

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Honorable Charles B. Butler
Prosecuting Attorney
Doniphan, Missouri

Dear Sir:

This will acknowledge receipt of your recent request for an opinion, which reads as follows:

"Quite a controversy has arisen here over the sale of the gymnasium by the school board. Doniphan is a consolidated school district. I enclose you a copy of the advertisement of sale.

"They are selling under section 10471. The only question involved, as I presume the board can say when the property is no longer needed for school purposes, is, can the School Board sell the property on time payments and not put the money for the sale in the building fund as the statute requires. Will you please give me the opinion of your office in the matter. I expect to be in Jefferson City the first of next week and will drop in and see you. I would like to have this opinion before the sale."

The portion of Section 10471, R. S. Mo. 1939, which is applicable to your question reads as follows:

" * * * and 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 has long been held by the courts in this state that directors of school districts have only such authority as is expressly granted them by statute and such as is necessarily implied in the powers expressly granted. In the case of State v. Kessler, 136 Mo. App. 1. c. 240, 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.
* * *"

Likewise, in the case of Consolidated School District No. 6 v. Shawhan, 273 S. W. 1. c. 184, the court said:

"Plaintiff district is a corporation created by statute; its board of directors is what the statute makes it, having only such powers and functions as are expressly delegated to it. Armstrong v. School District, 28 Mo. App. 169. * * *"

Again, in the case of Wright v. Board of Education, 295 Mo. 1. c. 476, the Supreme Court said:

"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 con-

struction, 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. Any doubt or ambiguity arising out of the terms of the grant must be resolved in favor of the people. (Watson Seminary v. County Ct. Pike Co., 149 Mo. 1. c. 70, and cases, 45 L. R. A. 675; Armstrong v. School Dist., 28 Mo. App. 180; 25 R. C. L. p. 1091, sec. 306 and notes.)"

Applying the rules announced by the courts in the foregoing cases to Section 10471, we believe it is evident that the board does not have authority to accept anything but cash at the sale of the school property. The statute does not expressly give the board the right to sell on terms and take security for the balance of the purchase price. The statute says that the proceeds shall be placed in the building fund of the district, and we think this clearly contemplates cash. The acceptance of security for the balance of the purchase price, in effect, amounts to an investment of the funds of the district. The board is not given express authority to make such investment. Had the Legislature intended that the board could accept security for the balance of the purchase price, the law would no doubt have specified the nature of the security, the length of time which might be extended, and the rate of interest which should be charged on such deferred payments. In other cases where officers are authorized to invest public funds, the law sets out the terms and conditions under which they may make such investments.

Since no terms or conditions are set forth in Section 10471, in order to hold that the board had the right to give terms of credit we would have to hold that the board had unlimited authority to prescribe the terms and conditions. In other words, if such a theory were adopted, the board could accept a deed of trust back on the property for a year or for ten years, at any rate of interest that

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it saw fit, or it could accept no security at all for the deferred payments. We believe that the absence of these terms and conditions for extension of credit argues strongly for the proposition that the statute does not give the board such power.

CONCLUSION

It is, therefore, the opinion of this department that boards of education in city, town and consolidated school districts can only sell the property of such districts which is no longer needed by public sale for cash and cannot extend credit or accept deferred payments for said property.

Respectfully submitted

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