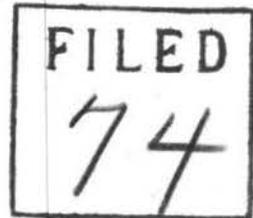


SCHOOLS: Directors cannot allow school building to be used as
a residence.

September 21, 1942.



Miss Bertha H. Reed
County Superintendent
Department of Public Schools
Carthage, Missouri

Dear Miss Reed:

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

"The inquiry has come to this office as to the legality of permitting some one to use a school house as a residence. The school district transports their children to another school.

"Please advise me at your very earliest convenience."

The care and custody of school buildings is by law vested in the school board. Section 10337, Revised Statutes of Missouri, 1939, provides as follows:

"The board of directors or board of education shall have the care and keeping of all property belonging to the district, and shall provide the necessary globes, maps, charts, apparatus, supplementary books, and other material for the use of the school. The board shall keep the schoolhouses and other buildings in good repair, the grounds belonging thereto in good condition, and shall provide fuel, heating apparatus, and other material and appliances necessary for the proper heating, lighting, ventilation and sanitation of the schoolhouses; shall

have the floors swept and the fires made at the expense of the district, and cause an accurate account of the expense thereof to be kept and a report of the same to be made at the next annual meeting. The board of directors, or board of education, having charge of the schoolhouses, buildings and grounds appurtenant thereto, may allow the free use of such houses, buildings and grounds for the free discussion of public questions or subjects of general public interest, for the meeting of organizations of citizens, and for such other civic, social and educational purposes as will not interfere with the prime purpose to which such houses, buildings and grounds are devoted: Provided, that at any annual or special meeting the use of the schoolhouse for any of the above purposes may by a majority vote of the qualified voters voting on the proposition be prohibited. Such prohibition shall remain in effect until the next annual school meeting. Whenever any such application shall be granted and the use of such houses, buildings or grounds shall be permitted for the purposes aforesaid, the board of directors, or board of education, having charge of the same may provide, free of charge, heat, light and janitor service therein when necessary, and may make such other provisions, free of charge, as may be needful for the convenient and comfortable use of such houses, buildings and grounds for such purposes, or said boards of directors, or boards of education, may require all such expenses to be paid by the organizations or persons who are allowed the use of the houses, buildings and grounds. All persons upon whose application, or at whose request, the use of any schoolhouse, building, or part thereof or any grounds appurtenant thereto, may be permitted as herein provided, shall be jointly and severally liable for any injury or damage thereto which directly results from such use, ordinary wear and

tear excepted: Provided, however, this article shall not apply to cities which have or may hereafter have 75,000 inhabitants or more."

It will be seen from the foregoing section that the board is required to keep the school building in proper condition for school purposes. Certain exceptions are made by the foregoing section to the uses to which the building may be put. The section provides that in certain cases the building may be used for other than school purposes, but even that use is limited to certain specified meetings.

It has been uniformly held by the courts of 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 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 construction, 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. l. 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.)"

Nothing in Section 10337, supra, expressly authorizes the school directors to allow the use of the school building for residence purposes. Neither do we think that anything said in said section can be construed to fairly imply that the Legislature intended to give such power to the directors. Certainly a doubt exists as to the authority of the directors, and under the foregoing authorities such doubt should be resolved against the directors having the power. Schoolhouses are paid for by public money and are dedicated to educational purposes only, except where the law expressly provides otherwise.

It is a familiar rule of statutory construction that the mention of one thing implies the exclusion of another thing. In the case of Kansas City v. J. I. Case Threshing Machine Co., 337 Mo. 913, 87 S. W. (2d) 195, 205, it is said:

"It is a general rule of (statutory) interpretation that the mention of one thing implies the exclusion of another thing; *expressio unius est exclusio alterius.*"

Therefore, we must conclude that where the school directors are given specific directions as to the purposes for which the schoolhouse may be used all other purposes are excluded.

Conclusion

It is therefore the opinion of this office that a school board does not have the right to permit the schoolhouse

Miss Bertha H. Reed

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to be used as a residence even though the schoolhouse is not being temporarily used to hold school in.

Yours very truly,

HARRY H. KAY
Assistant Attorney-General

APPROVED:

ROY MCKITTRICK
Attorney-General

HHK:EG