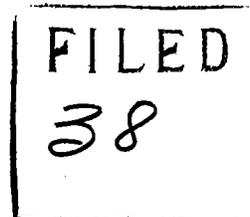


COMMON SCHOOL DISTRICTS: Power to sell school property vested in voters of district at annual school meeting.

May 16, 1947



Honorable Clyde V. Hastings
Prosecuting Attorney
Worth County
Grant City, Missouri

Dear Mr. Hastings:

This is in reply to your letter of May 10, 1947, requesting an opinion from this department, which reads as follows:

"On the 29th day of April 1947 a tornado crossed this, Worth County, and destroyed the frame school house of a common school district. So far as being a building it is a total wreck but there is some salvage.

"This district has not been having any school and will not during the next school year, and like a great many schools in the country, may not need a school house for a long time. For this reason they do not intend to rebuild at this time.

"The directors can sell the wreckage but are not sure they have that right without a special election since the time for the Annual Election has past. Of course if the wreckage lies out in the weather it will soon become worthless and will be carried away by vandals unless it is stored.

"Would like to have your opinion as to what should be done in this matter."

The first question presented is whether the Board of Directors of a common school district is authorized to sell a schoolhouse belonging to the district without first submitting the proposition for vote at a school meeting. Your attention is directed to Section 10403, R. S. Mo. 1939:

"The title of all schoolhouse sites and other school property shall be vested in the district in which the same may be located; and all property leased or rented for school purposes shall be wholly under the control of the board of directors during such time; but no board shall lease or rent any building for school purposes while the district schoolhouse is unoccupied, and no schoolhouse or school site shall be abandoned or sold until another site and house are provided for such school district."

Under the provisions of the above section title to the schoolhouse under consideration is vested in the school district, that is, in the people and not in the board of directors. Said section further provides that "no schoolhouse or school site shall be abandoned or sold until another site and house are provided for such school district." For our purpose, we must construe the words "schoolhouse or school site" to read "schoolhouse and school site," in order for them to be consistent with the remainder of the phrase, that is, "shall be abandoned or sold until another site and house are provided for such school district." The court said in Ex parte Lockhart, 171 S.W. (2d) 660, at page, 666:

"The word "or" in statutes or documents is frequently interpreted to mean "and," and this interpretation is given to it whenever required to carry out the plain purpose of the act or contract and when to adopt the literal meaning would defeat the purpose or lead to an absurd result.' State ex rel. Stinger v. Krueger, 280 Mo. 293, loc. cit. 309, 217 S.W. 310, loc. cit. 315. Also, see City of St. Louis v. Murta, 283 Mo. 77, 222 S.W. 430."

If this construction were not given, said portion of the statute would be confusing and possibly ineffective, as a schoolhouse could not be sold unless another house and site were provided. By construing that portion of Section 10403 as we do, it imposes no limitation on the present case where there is no intention to sell or abandon the site but only to sell the schoolhouse. This construction is in line with the intention of the Legislature as said section was apparently intended merely to restrict the sale of both a schoolhouse and the site until another house and site have been provided.

Section 10419, Mo. R.S.A., 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:

* * *

"Eighth--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.

* * *

Title to said schoolhouse is vested in the school district, and under the provisions of the above section the voters of the district are the proper parties to direct its sale, in other words, to authorize the board of directors to sell said schoolhouse on such conditions and under such limitations as may be imposed. The board of directors is therefore precluded from selling said schoolhouse without authorization from the voters of the district. This conclusion is strengthened by the fact that there is no other provision relative to the sale of a schoolhouse in the law pertaining to common school districts.

Now that it is settled that the board of directors can sell the schoolhouse only on direction of the voters at a

school meeting, the question arises as to the propriety of calling a special meeting for this purpose. The statute providing for special meetings is Section 10361, R. S. Mo. 1939, which is as follows:

"Special school meetings for the transaction of business authorized by this chapter, and not restricted to the annual meeting or otherwise provided for, shall be called by the board when a majority of the qualified voters of the district sign a petition requesting the same, and designating therein the purpose for which said meeting is desired. Upon the reception of such petition, the board shall call said special meeting, by notices thereof to be given in the same manner as is provided in section 10418; and when assembled, the meeting shall be organized by the election of a chairman and a secretary, who shall keep a correct record of the transactions of the meeting, said record to be signed by the secretary, attested by the chairman, and filed with the district clerk, who shall enter the same upon the records of the district; but said meeting shall have no power to act upon any proposition not contained in the petition and submitted in the notices." (Emphasis ours.)

The application of the above statute is limited inter alia to the transaction of business which is not restricted to the annual meeting. It will be noted that Section 10419 sets out the powers of the voters at the annual meeting and among these express powers is the power to direct the sale of property belonging to the district. Thus, it seems that the proposition to sell said schoolhouse cannot be submitted to the voters of the district at a special meeting but can be presented only at the annual school meeting. The procedure for said sale is set out in Section 10419 and must be followed as there is no other provision made for such a sale. In the case of *In re Farmers' & Merchants' Bank of Chillicothe*, 63 S. W. (2d) 829, where the board of directors of a school district exceeded its authority in executing an assignment, the court said at page 830:

"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)). * * *"
(Chapter 72)

We submit therefore that it is mandatory that a proposal to sell a schoolhouse belonging to the school district be presented at the annual meeting.

In the case of Richardson v. McReynolds, 114 Mo. 641, the school board called a meeting for the purpose of borrowing money and issuing bonds therefor to erect and furnish a schoolhouse under the provisions of Section 7981, R. S. Mo. 1889 (now Section 10328). However, the propositions voted on were also for the purpose of buying a schoolhouse site. It was held there that the election was illegal and void because it did not conform to Section 7979, R. S. Mo. 1889 (now Section 10419) which was the only provision made for the purpose of purchasing a schoolhouse site. The court said at pages 650-651:

"It is also contended by plaintiff that as the propositions voted on May 9, 1891, were not only to borrow money and issue bonds in payment thereof, for the purpose of building a schoolhouse, but were also for the purpose of buying a schoolhouse site, and furnishing the schoolhouse when builded, that the election was without authority of law, and therefore illegal and void. There is no provision made by statute for the purpose of purchasing a schoolhouse site, except by section 7979, supra, and that is by taxation as therein provided. There was no authority for the election to borrow money, and to issue the bonds of the district in payment thereof for the purpose of buying a site. Such bonds when issued would have been void;
* * * *"

Recognizing the problem there, the Legislature in 1903 enacted a new section which extended the scope of the election to include that of purchasing schoolhouse sites.

The situation in the Richardson case involved a portion of Section 10419 and is analogous to the present situation because there is no other provision made for the sale of a schoolhouse belonging to the common school district, and therefore the provisions in Section 10419 must be observed. A special election for said purpose would be without authority of law.

The questions presented arose out of extraordinary circumstances and the conclusion reached may result in a certain amount of hardship in view of the fact that the time for the annual school district meeting has recently past. However, under the provisions of Section 10337, R. S. Mo. 1939, the board of directors is charged with the care and keep of all property of the district and must keep the schoolhouse and other buildings in good repair. Under this authority the board is evidently empowered to store as much of the equipment and property contained in the schoolhouse as possible and take such other protective measures as they see fit in order to preserve all of the school property involved until the voters of the district at the next annual school meeting determine what action should be taken with regard to a sale.

CONCLUSION

Therefore, it is the opinion of this department that the board of directors of a common school district cannot sell a schoolhouse or other property which belongs to the school district without authorization of the voters of the district. And further, said proposition can be presented to the voters only at the annual school meeting.

Respectfully submitted,

DAVID DONNELLY
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General