

SCHOOLS:
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ARMORIES:

Board of directors of city, town or consolidated school district cannot deed tract of land to the state for armory purposes without consideration, as board only has authority to "advertise, sell and convey" same.

January 5, 1951

1-4-51

Hon. Floyd L. Snyder, Sr.,
State Representative
Jackson County, 11th District
521 S. Noland Road
Independence, Missouri

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Dear Mr. Snyder:

This is in reply to your recent request for an official opinion of this department which reads in part as follows:

"I wish that your office would furnish me an opinion as to whether it would be legal for the Independence, Missouri School district to convey to the State of Missouri for Armory purposes a tract of land here in Independence. This conveyance would be made without a money consideration.

"If this cannot be done, legally, then tell me how such a transfer can be made."

A school district may dispose of its property only in the manner provided by statute. In the case of Cape Girardeau School District v. Frye, 225 S. W. (2d) 484, the court stated at l. c. 488:

"* * * * A board of directors is but a creature of statute, and its members can exercise no authority unless the same is either expressly conferred or else arises by necessary implication from the powers that are conferred. State v. Kessler, 136 Mo. App. 236, 240, 117 S.W. 85; Consolidated School Dist. No. 6 v. Shawhan supra. * * * *"

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Again, in *In re Farmers' and Merchants' Bank of Chillicothe*, 63 S. W. (2d) 829, we find the following at l. c. 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)). * * * *"

We assume that the School District of Independence is of that class as is governed by Article 5 of Chapter 72, R. S. Mo. 1939, which Article relates to city, town and consolidated schools. The only authority providing for the disposal of property by these classes of schools is Section 10471, R. S. Mo. 1939, which provides that:

"When the demands of the district require more than one public school building therein, the board shall, as soon as sufficient funds have been provided therefor, establish an adequate number of primary or ward schools, corresponding in grade to those of other public school districts, and for this purpose the board shall divide the school district into school wards and fix the boundaries thereof and the board shall select and procure a site in each newly formed ward and erect a suitable school building thereon and furnish the same; and the board may also establish schools of a higher grade, in which studies not enumerated in section 10627 may be pursued; 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."

(Underscoring ours)

Therefore, if the land in question is no longer required for the use of the district, it may be disposed of by the board. However, the board's authority in this regard is not unlimited, as it only has the authority to "advertise, sell and convey" same.

Furthermore, we do not feel that the words, "advertise, sell

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and convey", can in any way be construed as being disjunctive, and the presence of the word "sell" in this phrase requires that there be a consideration in the transaction of disposal. In the case of Eastern Shore Trust Co. v. Lockerman, 129 A. 915, 148 Md. 628, it was held at l. c. 918 that:

"* * * * To sell means ordinarily to transfer to another for a valuable consideration the title or the right to possess property. * * * *"

In United States v. Benedict, 280 F. 76, the court stated at l. c. 80:

"But it will not do to stop with any narrow definition of the word 'sell', which in its ordinary sense means a transfer of property for a fixed price or its equivalent. * * * *"

It has also been held that the power to sell property does not include or imply the power to give away same. Regarding this, we find the court stating in Myrick v. Williamson, 67 So. 273, 190 Ala. 485, at l. c. 275 that:

"The bill shows that the two deeds, cancellation of which is here sought, were executed without consideration to respondent, and were, in effect, a gift of the bulk of the estate to the respondent. The power to sell was, in our opinion, accompanied with a trust, and for certain purposes. There is nothing in the will which can be construed as giving to the wife a right to give away the estate. It is, we think, too plain for argument that the power to sell did not authorize such a disposition of the estate as is alleged in the bill was made by the execution of these two deeds."

In Chenault's Guardian v. Metropolitan Life Ins. Co., 53 S. W. (2d) 720, 245 Ky. 482, at l. c. 723:

"Accordingly, even where the purpose of sale and direction as to the use of the proceeds is not attached to the power, it is held that the authority to sell does not carry with it the power to make a gift of the subject-matter or convey it without consideration, and such transfer is invalid. * * * *"

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And in *Hawhurst v. Rathgeb*, 51 P. 846, 119 Cal. 531, at l. c. 847:

"* * * * The words 'sell and transfer', as there used, are of no broader signification than the words 'sell and convey' used with reference to a conveyance of real estate, and the latter, employed as the operative words in a power to convey land, do not carry authority to mortgage or otherwise dispose of the property. * * * *"

Furthermore, the presence of the word, "advertise", in the statutory language giving the board of directors authority to dispose of land owned by the district offers further support to the proposition that the land cannot be given away. If the land could be given away, this requirement to advertise would be unnecessary and could serve no useful purpose. However, along with the authority to sell and convey, the authority to advertise serves a very reasonable and practical purpose, aiding the board of directors in effecting an expeditious and profitable disposal. We therefore feel that the requirement to advertise also necessitates a sale for a consideration, as only then could this requirement be logically justified.

In view of the above, it must be concluded in the instant case that the board does not have the authority to forthwith deed the tract of land to the State of Missouri for armory purposes, or to anyone else, without a consideration. Only by following the provisions of Section 10471, supra, may this land validly be transferred and Section 10471 does not authorize the board to give away school district property no longer required for the use of the district.

CONCLUSION

It is, therefore, the opinion of this department that the board of directors of a city, town or consolidated school district does not have the authority to forthwith deed a tract of land

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no longer required for the use of the district, to the State of Missouri for armory purposes without a consideration. The Board's only authority in this regard is to "advertise, sell and convey" such property as provided in Section 10471 R. S. Mo. 1939, which authority does not include the power to give away such property.

Respectfully submitted

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APPROVED:

J. E. TAYLOR
ATTORNEY GENERAL

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