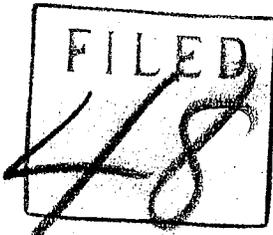


SCHOOLS: County bd. of zoning adjustment has no
SCHOOL DISTRICTS: authority to issue special permit to
PUBLIC POLICY: operate trailer court excluding chil-
ZONING: dren; contract between school district
COUNTY BD. OF ZONING ADJUSTMENT: and property owner whereby property
BONDS: owner agrees to forfeit permit to
CONTRACTS: operate trailer court if children are
allowed to reside there void as
against public policy; bond condi-
tioned upon performance of such con-
tractual stipulation also void.



September 8, 1955

Honorable Harry Keller
Member, House of Representatives
1301 E. Armour
Kansas City, Missouri

Dear Mr. Keller:

This is in response to your request for opinion dated August 15, 1955, which reads as follows:

"FACTS: M. P. Clarkin is the owner of several acres of ground located in Jackson County, Missouri. This land is within the jurisdiction of Reorganized School District No. 3 of Jackson County. Mr. Clarkin has applied to the Board of Zoning Adjustment of Jackson County for a permit to operate a trailer court on his said land. Objection to the issuance of such a permit was raised by the School District on the grounds that the school facilities of the district were already taxed beyond capacity and the addition of further children into a trailer camp would create a situation whereby there would not be sufficient revenue to educate the children and would result in classrooms of such size as to cause the present schools to become discredited.

"In an effort to avoid such a situation Mr. Clarkin agreed with the School District to enter into an agreement whereby he would not permit children to live in his trailer court and would rent to adults only, and orally agreed to and did amend his application for a special permit to operate a trailer court 'so as to apply for a special permit to operate a trailer court with the provision that children not be allowed to live there.'

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"QUESTION: 1. Does the Board of Zoning Adjustment have the authority to issue a special permit to operate a trailer court excluding children?

"2. Can a School District enter into a valid agreement with a property owner whereby that property owner agrees to forfeit his special permit to operate if such property owner allows children to reside within his trailer court?

"3. Can a School District enforce an agreement with an individual property owner whereby that individual agrees to put up bond to guarantee the performance of a contractual stipulation with the School District that he will not allow children to live on his premises, and then such individual at a future date violates such agreement?"

Question 1. You have informed us by telephone that there is nothing in the master plan of the county adopted by the county planning commission (Sec. 64.040, RSMo 1949) or in the regulations and restrictions ordered by the county court (Sec. 64.090, RSMo 1949) which would purport to authorize a proviso in a permit for a trailer court limiting the occupancy of such trailer court to adults only.

The powers and duties of the county board of zoning adjustment are found in Section 64.120, RSMo 1949. These powers are very similar to those granted to boards of adjustment in cities in counties of ten thousand or more population (Sec. 89.090, RSMo 1949). Under that section it has been held that the board of adjustment has no authority to impose any additional requirement beyond that established by ordinance.

In Fairmount Inv. Co. v. Woermann, 357 Mo. 625, 210 S.W. (2d) 26, 30, the court said:

" * * * The Board had no power to so re-write the ordinance by imposing such additional requirement. * * *"

By the same token, we do not believe that the county board of zoning adjustment would have the power to establish a restriction not required by the body in which the power is vested to

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make such restrictions. Therefore, the provision in the permit that children not be allowed to live in the trailer court would be of no effect.

Question No. 2. Upon retiring from public life one of the greatest men the world has produced left this parting injunction in the farewell address to his countrymen:

"Promote then, as an object of primary importance, institutions for the general diffusion of knowledge. In proportion as the structure of government gives force to public opinion, it is essential that public opinion should be enlightened."

As pointed out in *Wright v. Board of Education of St. Louis*, 295 Mo. 466, 246 S.W. 43, 27 A.L.R. 1061, the State of Missouri has given its affirmative approval to this fundamental precept in each of its successive constitutions. Section 1, Article IX, Constitution of Missouri, 1945, reads as follows:

"A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the general assembly shall establish and maintain free public schools for the gratuitous instruction of all persons in this state within ages not in excess of twenty-one years as prescribed by law. * * *"

Pursuant to that constitutional mandate, the Legislature has from time to time enacted salutary laws for the establishment and maintenance of free public schools. In construing the statutes relating to public schools the courts have recognized it as their duty to construe them liberally so that the advantage of securing an education can be made as free as possible to the boys and girls of Missouri (*Northern v. McCaw*, 189 Mo. App. 362, 370, 175 S.W. 317).

In the exercise of the authority and duty imposed upon it by the Constitution the Legislature has created school districts (Chapter 165, RSMo 1949) and vested said districts with certain powers and duties. They are public corporations, form an integral part of the state, and constitute that arm or instrumentality thereof discharging the constitutionally entrusted governmental function of imparting knowledge and intelligence to the youth of the state that the rights and liberties of the people be preserved

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(School Dist. of Oakland v. School Dist. of Joplin, 340 Mo. 779, 102 S.W. (2d) 909, 910, and cases cited therein; Kansas City v. School Dist. of Kansas City, 356 Mo. 364, 201 S.W. (2d) 930, 933).

It has been held many times that a school district does not have unlimited powers, but being a creature of the Legislature has only those powers expressly granted to it and those fairly exercised by necessary implication from those conferred (State v. Kessler, 136 Mo. App. 236, 240, 117 S.W. 85; Consol. School Dist. No. 6 of Jackson County v. Shawhan, Mo. App., 273 S.W. 182, 184; Wright v. Board of Education of St. Louis, 295 Mo. 466, 476, 246 S.W. 43; 56 C. J., Schools and School Districts, page 193, Section 46, page 294, Section 152, page 331, Section 202). Section 432.070, RSMo 1949, expressly provides that no school district shall make any contract unless the same be within the scope of the powers of the district or be expressly authorized by law. That section reads as follows:

"No county, city, town, village, school township, school district or other municipal corporation shall make any contract, unless the same shall be within the scope of its powers or be expressly authorized by law, nor unless such contract be made upon a consideration wholly to be performed or executed subsequent to the making of the contract; and such contract, including the consideration, shall be in writing and dated when made, and shall be subscribed by the parties thereto, or their agents authorized by law and duly appointed and authorized in writing."

At no place in the school laws do we find any authority for a school district to enter into a contract such as the one under consideration which has for its obvious purpose the exclusion of children from the district. On that basis alone we believe we would be justified in condemning this contract. But aside from that aspect of the problem, there is a more conclusive and persuasive one invalidating this purported agreement.

It is well settled that contracts which are contrary to public policy are void (Nute v. Fry, 344 Mo. 163, 125 S.W. (2d) 841, 121 A.L.R. 673; White v. McCoy Land Co., 229 Mo. App. 1019, 87 S.W. (2d) 672, 685). The public policy of the state with regard to public education must be gleaned from the Constitution and statutes and judicial decisions in regard thereto.

As said in White v. McCoy Land Co., 229 Mo. App. 1019, 87 S.W. (2d) 672, 685:

"The only authentic and admissible evidence of the public policy of a state on any given

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subject are its constitution, laws and judicial decisions. The public policy of a state, of which courts take notice, and to which they give effect, must be deduced from these sources."

In State ex rel. Halbert v. Glymer, 164 Mo. App. 671, 676, 147 S.W. 1119, the Springfield Court of Appeals declared:

"The policy of this state is to educate, and to furnish free of charge, good schools for all children of school age, and even to compel the attendance of children thereto. Section 1 of article 11, of the state Constitution, reads: 'A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the General Assembly shall establish and maintain free public schools for the gratuitous instruction of all persons in this state between the ages of six and twenty years.' It is therefore the duty of the courts to liberally construe our statutes relating to schools, and in such a manner as to open, and not to close, the doors of the schools against the children of the state. As said by the Supreme Court of Wisconsin in State v. Thayer, 41 N.W. 1014: 'Such children are the wards of the state, to the extent of providing for their education to that degree that they can care for themselves and act the part of intelligent citizens. To secure these ends, laws relating to public schools must be interpreted to accord with this dominant, controlling spirit and purpose in their enactment, rather than in the narrower spirit of their possible relations to questions of pauperism and administration of estates.'"

As pointed out above, school districts are mere instrumentalities of the state in discharging the duty of providing free education to the youth of the state. Although they are bodies corporate and constitute separate legal entities, they are statutory trustees for the state in carrying out this important function. In fact, it has been held that the property of a district acquired from public funds is state property, and not the private property of the school district. In School Dist. of Oakland v. School Dist. of Joplin, 340 Mo. 779, 102 S.W. (2d) 909, 915, the court so held:

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" * * * In Missouri the property of school districts acquired from public funds is the property of the state, not the private property of the school district in which it may be located, and the school district is a statutory trustee for the discharge of a governmental function entrusted to the state by our Constitution."

From the applicable constitutional provisions, the statutes and the judicial decisions above cited, we can only conclude that it is the public policy of this state to provide free education to all children between the ages of six and twenty years and that this interest which society has in the education of the children of the state is paramount to the individual interest of any particular school district. To allow a school district to relieve itself in part of this obligation by prohibiting children from moving into the district would be contrary to the public interest and public policy.

Undoubtedly the officers of this district in entering into this contract have in mind the best interests of the children of the district in seeking to prevent overcrowding of the school-rooms. Meritorious as this objective may be, we do not believe that this is the method which should be or can be employed in relieving the situation. In *Nute v. Fry*, 344 Mo. 163, 125 S.W. (2d) 841, 844, the court said:

" * * * Contracts against public policy should not be ruled according to whether the purposes and objectives are meritorious or otherwise so long as the law holds such contracts void for so to do would permit the governmental functionary charged with the determination of the issue to disregard the mandate of the law and substitute his individual whim as to the meritoriousness of the objectives for the governing principle of law. * * *"

Overcrowding of classrooms is prevalent throughout the state. If one school district can by contract relieve its own individual situation by prohibiting the entrance of children into the district, so can all others in the state. Such a condition would be unthinkable. In this one isolated instance the injury to the public would probably not be very great, but the tendency of such agreements extended over the state and given the stamp of judicial approval would be to thwart the over-all state policy of providing free education. In 13 C. J., Contracts, Section 360, page 425, it is said:

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" * * * It is perhaps correct to say that public policy is that principle of law which holds that no person can lawfully do that which has a tendency to be injurious to the public or against the public good, which may be designated, as it sometimes has been, the policy of the law or public policy in relation to the administration of the law. Where a contract belongs to this class, it will be declared void, although in the particular instance no injury to the public may have resulted. * * * The law looks to the general tendency of such agreements, and it closes the door to temptation by refusing them recognition in any of its courts. * * *"

Boatmen's Nat. Bank of St. Louis v. Wurdeman,
344 Mo. 573, 127 S.W. (2d) 438, 440.

Therefore, we conclude that the contract under consideration would be void as against the public policy of the state.

Question 3. The bond to which you refer in paragraph 3 of your request being conditioned upon an illegal consideration is void.

In *Presbury v. Fisher & Bennett*, 18 Mo. 50, 52, the court said:

" * * * The rule is, that where the condition of a bond is entire and the whole be against law, it is void; * * *"

See also 11 C.J.S., Bonds, Section 33, page 416.

CONCLUSION

In the premises, it is the opinion of this office that the County Board of Zoning Adjustment of Jackson County does not have the authority to issue a special permit to operate a trailer court excluding children therefrom.

It is the further opinion of this office that a contract entered into between a school district and a property owner whereby the property owner agrees to forfeit his special permit to operate a trailer court if such property owner allows children to reside within his trailer court is void as against public policy.

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We are of the further opinion that a bond conditioned upon the performance of such a contractual stipulation is also void as being founded upon an illegal consideration.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John W. English.

Yours very truly,

JOHN M. DALTON
Attorney General

JWI:ml