

SCHOOLS: Individual, unincorporated association or not-for-profit corporation may operate summer school in school district buildings without charge. Members of board and members of not-for-profit corporation contracting with district may be same persons, provided they have no direct or indirect pecuniary interest in such contract.

April 4, 1960



Honorable Norman Anderson
Prosecuting Attorney
St. Louis County
Courthouse
Clayton 5, Missouri

Dear Sir:

This is in reply to your letter of December 3, 1959, requesting an opinion from this office on two questions relating to the possible use of school buildings for the purpose of operating a summer school. Your inquiry reads:

"We have been requested to seek an opinion from you concerning the following two items:

(1) May the board of education of a city, town or consolidated school district permit an individual, an unincorporated association, or a not-for-profit corporation operate a summer school program in school buildings of the district, without charge under the authority of Section 166.030, Revised Statutes of Missouri, 1959?

(2) Assuming the board of education may permit a not-for-profit corporation to operate a summer school program, can the members of the board of education of the district, acting in their individual capacities, be the members of the not-for-profit corporation and contract with the school district for the use of the buildings?

"As these are questions which effect not only the school district involved but all school districts in the County and State we feel that they are of sufficient importance to forward them to you for an opinion."

Honorable Norman Anderson

We have subsequently been informed that the courses contemplated being taught in the summer school about which you inquire are the subjects normally a part of the public school curriculum.

Section 166.030, RSMo, relating to the care of school buildings, reads:

"1. 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 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.

"2. 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.

Honorable Norman Anderson

"3. 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 organization 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 section shall not apply to cities which have or may hereafter have seventy-five thousand inhabitants or more." (Emphasis ours.)

By our opinion to you dated November 13, 1959, this office determined that a six-director school district could not conduct a summer school in addition to its regular school term for both high school and elementary school children. We did not attempt, in that opinion, to cover situations where such a summer school program was carried on by an individual or unincorporated association or a not-for-profit corporation.

The underscored portion of paragraph 2 of Section 166.030, supra, indicates that the board of directors of the school district may permit the free use of the district's buildings for "educational purposes," among other civic and social purposes which this section allows and the school district's voters do not prohibit. We think that conducting a summer school can, without a doubt, be considered as an "educational purpose."

The term "education" has been defined judicially in State vs. Lesueur, 99 Mo. 552, 13 SW 237, 238, as follows:

Honorable Norman Anderson

" * * * The following definition appears to have been prepared with care: "Education" is the bringing up, physically or mentally, of a child, or the preparation of a person, by some due course of training, for a professional or business life or other calling." 6 Amer. & Eng. Cyclop. Law, 158. * * *

Conducting a summer school within this definition would clearly seem to be within the purposes enumerated by the statute.

As a legal proposition, we do not see that it makes any difference whether the summer school is conducted by an individual, an unincorporated association or a not-for-profit corporation. In permitting such use of the school property, the board of education would undoubtedly want to consider such things as the responsibility, stability and continuity of the person or group using the building, but that is a matter of policy not of law.

Having concluded that a summer school program may be operated by a not-for-profit corporation, the next question is whether the same persons may be both members of the board of education and members of the not-for-profit corporation and contract with the school district for the use of the buildings.

As a general proposition, a member of a school board may not enter into a contract with the board of which he is a member. See enclosed opinions to Fred C. Bollow dated June 30, 1948, Homer L. Swenson dated July 17, 1950; James T. Riley dated May 15, 1953, and James W. Farley dated January 9, 1957. The reason for this rule of public policy is to eliminate the possibility of temptation of a public official to serve his own personal interests to the prejudice of the interest of those for whom the law authorized him to act in the premises as an official.

As shown in the enclosed opinion to Rolin T. Boulware, dated May 15, 1958, the interest on the part of a public official which will invalidate a contract is a pecuniary interest. If the corporation entering into a contract with a school district for the conduct of a summer school is one not-for-profit and if the members thereof have no direct or indirect pecuniary interest in the contract, we perceive no reason why the same persons could not be both members of the board of education and members of the not-for-profit corporation.

Honorable Norman Anderson

CONCLUSION

It is the opinion of this office that the board of education of a six-director school district may permit an individual, an unincorporated association or a not-for-profit corporation to operate a summer school program in a school building of the district without charge. It is the further opinion of this office that the same persons may be both members of the board of education and members of the not-for-profit corporation and may contract with the district for the conduct of a summer school in the school district buildings, provided the members of the not-for-profit corporation have no direct or indirect pecuniary interest in such contract.

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

Yours very truly,

JOHN M. DALTON
Attorney General

JEB:JWI:ml
Encs (5)