

November 17, 1961



Honorable Paul S. Bell  
Prosecuting Attorney  
Crawford County  
Steelville, Missouri

Dear Mr. Bell:

This is in reply to your opinion request of July 27, 1961, wherein you state:

"I have a situation in the county where the School Board has sold and removed the fire escapes to a building which was abandoned by the School District. According to my information this sale was made without any advertisement whatsoever. I would like your opinion on two points: First, is it necessary for a School Board to advertise the sale of personal property before selling. Second, if it is necessary and the School Board fails to do so, does that constitute a crime which should be prosecuted by the Prosecuting Attorney.

162.091  
"Section 165.370 of RSMo 1959, makes some reference to advertising but does not seem to include all sales of personal property by a School Board and Section 165.160 would seem to make any wilful neglect to advertise a misdemeanor if such advertising is necessary before selling personal property."

162.091  
Section 165.160 RSMo 1959 states:

"Any district or county clerk, county superintendent, county treasurer, school director, or other officer, who shall

willfully neglect or refuse to perform any duty or duties pertaining to his office imposed upon him by law, shall be regarded as guilty of a misdemeanor and subject to a fine of not more than one hundred dollars, to be recovered in any court of law in this state having competent jurisdiction."

In essence, said statute makes it a crime for wilful neglect or failure of school district officers to perform their duties. Said statute creates no offense in the situation where the officers do act pursuant to their statutory authority, but violate such authority by not following the mandate of the statute.

Section 165.160, RSMo 1959, is a criminal statute, and as such must be strictly construed. In order to impose liability under such a statute its provisions must have been literally fulfilled.

Since the school board did sell the school personal property in the district, the fact that said board did not advertise the sale of said property would not render said board criminally liable under Section 165.160, RSMo 1959.

In conclusion, it may be stated that if the school board sells school property that is no longer required for the use of the district without advertising the same, said sale will not render the board criminally liable under Section 165.160, RSMo 1959.

Because of the foregoing conclusion, it becomes unnecessary to determine whether or not the school board was required to advertise this personal property for sale under Section 165.370, RSMo 1959.

Very truly yours,

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THOMAS F. EAGLETON  
Attorney General