

SCHOOLS:
SCHOOL DISTRICTS:
SCHOOL FUNDS:

A school district may acquire realty by purchase or by gift. Such acquisition should not bind or restrict the school board's discretion of determining educational policy. Contractual arrangements can only be for a reasonable period of time. School funds can not be used to improve public roads:

January 25, 1961



Honorable Hubert Wheeler
Commissioner
State Department of Education
Jefferson Building
Jefferson City, Missouri

Dear Mr. Wheeler:

This is in response to your letter dated October 7, 1960, in which you request an official opinion from this office. In your letter you state that the Northwest Missouri State College at Maryville (hereinafter referred to as the College) is located within the R-2 School District of Nodaway County (hereinafter referred to as the School District). You mention that there is a possibility that the College may convey a tract of land to the School District "without any consideration being paid or any commitment being made" by the School District. However, you state that the College may require a commitment that the high school to be built on the conveyed tract of land be used for teacher training by college students, such training activities to be done through agreement with the board of education and with full control vested in said board. You conclude your letter by setting forth several inquiries.

"In the light of the provisions of the laws governing the board of education of public school districts in the use and control of school district property I shall appreciate your advice and official opinion in answer to the following questions:

1. Does the board of education of school district R-2 of Nodaway County have the authority to accept from the board of regents of the Northwest Missouri State College the proposed 30 acres site for the erection of a new central high school?

2. Does the board of regents of the State College at Maryville have the authority to convey the 30 acre tract to the R-2 board of education without any monetary consideration?

3. Would the board of regents have the authority to convey the land without monetary consideration but with the restriction that the board of education cooperate by permitting the college to carry on its practice teacher training, observation, and laboratory experiences in connection with the public schools? The correlary to this problem would be whether the board of education would have the right to accept this land under these conditions.

4. Could funds of the school district be used to improve the roads to the proposed site? This would involve not only improving the roads immediately adjacent to the site but the two roads leading to the site."

In answering the above question only those matters in relation to the School District will be discussed. Those questions seeking to establish the authority of the College to convey the proposed school site, with or without consideration, with or without restrictive covenants or conditions, will not be answered. This procedure is being followed in view of the fact that the State College Board of Regents is not under the control or authority of the State Department of Education, nor has your department any concern with whatever authority is exercised by the College. Thus, question number 2 and the first part of question number 3 will not be answered.

The answer to the first question is in the affirmative. This is based on the assumption that the School District is to "accept" the property as a gift, free of any conditions. Section 165.110, RSMo 1949, as amended, provides that money donated to a school district be placed in the fund for which it was donated and accepted. Section 166.010, RSMo 1949, provides for the title of all schoolhouse sites to be vested in the school district. Although it is highly doubtful that the word "money" as used in Section 165.110, supra, could be expanded so as to include realty, this section is some evidence to show that a school district can be the recipient of a gift. Section 166.010, supra, states that the school district can hold property. Feeler v. Reorganized School Dist. No. 4 of Lincoln County, Mo. Sup., 290 S.W. 2d 102. A reasonable and necessary conclusion resulting from the combined perusal of these sections would be that the School District could accept a gift of land from the College

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to be used as the proposed high school location. This is not a violent conclusion in light of the fact that there is no statutory prohibition against receiving realty gifts, nor is there any violation of general public school principles by the acceptance of such a gift. The general proposition that a public or quasi-public corporation may take a devise or bequest under a will is found in Mississippi Valley Trust Co v. Ruhland 359 Mo 616, 222 SW 2d 750.

Your third question seeks to discover whether the School District can accept the land upon "the restriction that the board of education cooperate by permitting the college to carry on its practice teacher training, observations, and experience in connection with the public schools?" An opinion which helps greatly in the solution of the problem at hand is Board of Education of Louisville v. Society of Alumni of Louisville Male High School, 239 S. W. 2d 931. In this case the school board had been deeded certain real property with the provision, "that said property is to be used exclusively for the benefit of the Louisville Male High School and the white male pupils thereof." The Alumni Association of said high school was to have the right to enforce this covenant. After a school building had been built and after several years of using this building exclusively for boys, the Board of Education decided to use the building for co-educational instruction. The Kentucky court held that the covenant involved was invalid and unenforceable as against public policy. This conclusion was based upon the argument that the "covenant was an attempted ceding away of governmental powers by the School Board." Only the Board of Education, goes the opinion, could exercise the discretionary power in the management and control of the public schools under its jurisdiction. This discretion the court would not allow to be restricted by an enforcement of the covenant.

School districts in Missouri are separate legal entities referred to as "public corporations." Kansas City v. School Dist. of Kansas City, 356 Mo. 364, 201 S. W. 2d 930. These public corporations are used by the state to discharge the states' constitutional obligation of educating its youth. Art. IX, Sec. 1, Missouri Constitution, 1945. The legislature has given the respective boards of directors, or boards of education certain powers and duties. Section 163.010, RSMo 1949, as amended, gives the local school board the "power to make all needful rules and regulations for the organization, grading and government in their school district.***" The board has the power to "contract with and employ legally qualified teachers." Section 163.080, RSMo 1949. The "care and keeping of all property belonging to the district" is under the responsibility of the board, Section 166.030, RSMo 1949. In fact, Section 558.160, RSMo 1949, provides for fine and imprisonment for "neglect to perform any duty enjoined" upon the board members.

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The conclusion reached from the foregoing recitation of the statutory duties of the school board is to show that the school board alone has the discretion to determine whether laboratory teacher training is desirable for the School District. If so, how long is it to be employed? When may it be discontinued? How is it to operate? This discretion cannot be shackled by any contractual arrangement, nor may the school board dede away its governmental responsibilities of managing and controlling public schools and establishing general educational policies. Not only is the school board to exercise its duties and responsibilities unhampered by the above encumbrances, it is also inferentially required that the exercise of such duties is not to be unreasonably burdened by prior board decisions. As mentioned earlier the school board has the power to hire legally competent teachers. This power does not allow the employment of teachers for an unreasonable period of time -- the normal time being one year. Thus, a school board cannot bind their successors in office by a contract which unreasonably infringes upon their discretionary duties and powers to establish educational policies. A contract to engage in laboratory teacher training may only be made for a reasonable period of time and is not to irrevocably bind future school boards.

On April 26, 1939, this office rendered to the Honorable L. Cunningham, Jr., Prosecuting Attorney of Camden County, an opinion stating that a school district is not authorized to spend incidental funds for the purpose of repairing a public highway. This prior opinion is enclosed and sufficiently answers question number four.

CONCLUSION

It is the opinion of this office that R-2 School District of Nodaway County may acquire realty by purchase or by gift. In acquiring such property, however, the School District may not bind or restrict its discretion of determining and effectuating educational policy. Contractual arrangements made in this area may not be for an unreasonable period of time so as to hinder the exercise of discretion by future school boards.

It is also the opinion of this office that a School District may not spend school funds to improve a public road leading to the proposed school site.

The foregoing opinion which I hereby approve, was prepared by my assistant Eugene G. Bushmann.

Yours very truly,

Thomas F. Eagleton
Attorney General

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