

SCHOOLS:
RELIGION:
SCHOOL BUILDINGS:

A public school board may allow the use of public school property by a church college or municipality for civic, social and educational purposes that do not interfere with the prime purposes of the school property

and that where there is an exchange of consideration between the public school district and the church educational institution, then there is no aid to religion.

OPINION NO. 158

August 22, 1967

Honorable Don Witt
Prosecuting Attorney
Platte County
Platte City, Missouri



Dear Mr. Witt:

This opinion is issued in response to your request for an official ruling of this office.

You state that a six-director school district within your county has a building that is only partially used for public school purposes. You inquire:

"1. May said district lease a part or all of the unused portion of said building to a church endowed college in exchange for use by said school district of a facility at the college for public school purposes?

2. May said school district lease all or any part of said unused portion of said building to a city of the fourth class for use as a city hall for cash rent?"

Subsection 2 of Section 177.031, RSMo Supp. 1965, provides as follows:

"2. The school board having charge of the schoolhouses, buildings and grounds appurtenant thereto may allow the free use of the houses, buildings and grounds for the free discussion of public questions or subjects of general public interest, for the meeting or organizations of citizens, and for any other civic, social and educational

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purpose that will not interfere with the prime purpose to which the houses, buildings and grounds are devoted. If an application is granted and the use of the houses, buildings or grounds is permitted for the purposes aforesaid, the school board may provide, free of charge, heat, light and janitor service therein when necessary, and may make any other provisions, free of charge, needed for the convenient and comfortable use of the houses, buildings and grounds for such purposes, or the school boards may require the expenses to be paid by the organizations 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, is permitted as herein provided, shall be jointly and severally liable for any injury or damage thereto which directly results from the use, ordinary wear and tear excepted."

We assume from your letter that if the facilities are leased to the college, they will be used for educational purposes and if they are leased to the city, they will be used for civic purposes. Both of these purposes are within the provisions of Section 177.031, quoted supra.

You state that this part of the school building is not being used for school purposes at the present time. Therefore, we assume that the requirement that the purpose not interfere with the primary purpose of the school building, as required by Section 177.031, is also met.

You indicate in your letter that the college has a religious affiliation. Therefore, we will consider the question as to whether or not a public school board may allow the use of public school buildings to a religious affiliated educational institution.

In Kintzele v. City of St. Louis, Mo., 347 S.W.2d 695, the plaintiffs complained that the sale of land under the redevelopment law (Chapter 99, RSMo) to a private sectarian school violated the prohibitions of the state and federal constitutions against the use of public funds in the aid of religion. The Supreme Court of Missouri ruled against the plaintiffs contention quoting a New York

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court as follows, l.c. 700:

" * * * '[S]ince this sale is an exchange of considerations and not a gift or subsidy, no "aid to religion" is involved and a religious corporation can not be excluded * * * '."

Your letter indicates that there will be a quid pro quo or exchange of consideration by and between the school and the church college in connection with the use of the public school facilities. In the words of the Missouri Supreme Court, since this transaction is an exchange of consideration and not a gift or subsidy no "aid to religion" is involved.

This office has previously ruled that the state may lease unused property to a church. Enclosed is Opinion No. 81, Sheppard, 8-20-52. Also enclosed is Opinion No. 2, Anderson, 4-4-60 regarding use of public school buildings by individuals or organizations for educational purposes.

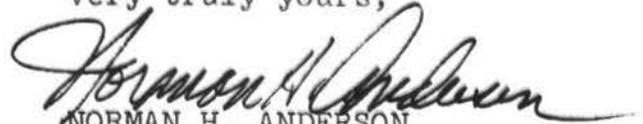
This opinion relates only to the authority of the public school district and makes no ruling upon the authority of the church college or the city to enter into leases.

CONCLUSION

Therefore, it is the opinion of this office that a public school board may allow the use of public school property by a church college or municipality for civic, social and educational purposes that do not interfere with the prime purposes of the school property and that where there is an exchange of consideration between the public school district and the church educational institution, then there is no aid to religion.

The foregoing opinion which I hereby approve was prepared by my assistant, Louis C. DeFeo, Jr.

Very truly yours,


NORMAN H. ANDERSON
Attorney General