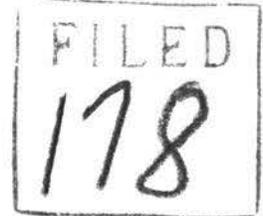


SCHOOLS: A six-director school district may acquire  
SCHOOL BUILDING: ownership of realty by purchase of an  
SCHOOL PROPERTY: undivided part interest as tenant in common.  
TENANTS IN COMMON: However, as to that part and during that  
time which the premises are used for school  
purposes, exclusive control must be vested in the board of education  
of the district.

OPINION NO. 178-1968

September 17, 1968

Honorable Marvin L. Dinger  
State Representative  
Iron County  
Ironton, Missouri 36350



Dear Representative Dinger:

This official opinion is issued in response to your request for a ruling. You inquire whether or not a public school district can lawfully acquire an undivided part interest in realty as a tenant in common. Your inquiry states:

"St. Joseph Lead Company is willing to build and pay for a school for the use of Iron County Consolidated School District #4, at Viburnum, Missouri, according to plans and specifications approved by that school district.

"It is the wishes and desire of the Board of Education of that district to eventually acquire title to this property, but in order to have sufficient funds, this will require a period of approximately 15 years. There would be no contract in this regard.

"Is it lawful for the school district to acquire an undivided interest, such as a 1/15 interest (to be granted to it by deed), each year until the entire interest or ownership has been acquired?

"This would mean that the school district and St. Joseph Lead Company would be tenants in common as to their respective interests until the school district acquires the entire interest or ownership."

Honorable Marvin L. Dinger

Section 177.091, RSMo. Supp. 1967, states as follows:

"1. The school board in each six-director district, as soon as sufficient funds are provided, shall establish an adequate number of elementary schools, and if the demands of the district require more than one elementary school building, the board shall divide the district into elementary school wards and fix the boundaries thereof. The board shall select and procure a site in each ward and erect and furnish a suitable school building thereon.

"2. The board may also establish high schools and may select and procure sites and erect and furnish buildings therefor \* \* \* "

Section 177.091 supra imposes upon the board of education of six-director districts the power to establish elementary and high schools. The statutes do not spell out any exclusive method which the board must use in establishing these schools. The Supreme Court of Missouri in the case of Hart et al v. Board of Education of Nevada School District et al, Mo., 252 SW 441, 442 stated:

"Under the statutes of this state \* \* \* the school boards, and they alone, are intrusted with the duty of providing and maintaining school facilities, including sites, school houses and furnishings. The methods and means to be employed in the discharge of these functions are committed wholly to their judgment and discretion."

In the case of Kemper et al vs. Long et al, Mo., 212 SW 871, the school district rented a room in which it conducted a high school. The court construed the word "establish" as used in Section 10869, RSMo. 1919 (the statutory predecessor of Section 177.091 supra), as referring to "the school rather than the site and building".

The court stated l.c. 872, 873:

" \* \* \* the Legislature did not intend to preclude an arrangement for high school buildings in such districts, in circumstances like those appearing in this record, by means other than the purchase of sites and the erection of buildings thereon by the district \* \* \* "

Honorable Marvin L. Dinger

In such circumstances, since a building is necessary, and since the board is not confined by this section to erecting a building, the board is left free, so far as this section is concerned, to acquire one by other lawful means. The word 'establish' has itself been held to include power to rent."

These authorities lead us to the opinion that school boards may acquire buildings for school purposes by any common method of legally acquiring possession or ownership of real estate. This would include tenancies in common. However, we further are of the opinion that any arrangement must vest control of the property wholly in the school board as to that part and during that time which the property is used for school purposes.

Section 177.011, RSMo. Supp. 1967, states:

" \* \* \* All property leased or rented for school purposes shall be wholly under the control of the school board during such time. \* \* \* "

Although this statute expressly mentions only lease-hold interests, we consider it to express a public policy that control of premises when used for school purposes must be exclusively in the school board and cannot be shared. Thus, where a board acquires ownership of realty through the purchase of an undivided partial interest, it is necessary that the board establish exclusive control over the premises when and where they are used for school purposes. This may be done by appropriate lease or contract arrangements.

Our opinion rules only on the legality of methods of acquiring possession and ownership of realty for school purposes. Whether or not a particular method is advisable, is a matter within the sound discretion of the board of education. We express no opinion as to advisability.

We also direct your attention to Article VI, Section 26(a), Missouri Constitution, Section 165.021, RSMo. Supp. 1967, which prohibit indebtedness by a school district in excess of current revenue. Also see enclosed Letter Opinion No. 7, Burlison, 3/2/64.

#### CONCLUSION

It is the opinion of this office that a six-director school district may acquire ownership of realty by purchase of an undivided part interest as tenant in common. However, as to that part and during that time which the premises are used for school

Honorable Marvin L. Dinger

purposes, exclusive control must be vested in the board of education of the district.

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

Yours very truly,

NORMAN H. ANDERSON  
Attorney General

Enclosure:

Letter Opinion No. 7  
Burlison, 3/2/64