

December 18, 1968

OPINION NO. 299  
Answered by Letter  
Klaffenbach

FILED  
299

Honorable Hubert Wheeler, Commissioner  
State Department of Education  
Jefferson Building  
Jefferson City, Missouri 65101

Dear Commissioner Wheeler:

This is in response to your question concerning the legal status of the Coates property. Your letter states the facts as follows:

"On May 12, 1964, Gordon R. Coates and his wife, Thelma B. Coates, executed a Quit Claim Deed transferring title of a farm in St. Charles County to the State Department of Education of the State of Missouri, for the use and benefit of the Missouri School for the Blind at St. Louis. On January 29, 1966, an additional 16.395 acres adjacent to the farm was purchased from Fred and Bertha Struckhoff, with title made in favor of the State Board of Education, for use and benefit of the Missouri School for the Blind at St. Louis and paid for by Mr. and Mrs. Coates."

In this response we will consider only the questions relating to the Coates farm.

Your letter further indicates that:

"Since problems arose as a result of stipulations on additional monies to be donated by Mr. Coates to use for building and after consideration by the State Board of Education of the distance from the St. Louis

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campus, the feasibility of such operation and the limited and costly usage of the property, the Board did not feel it advisable to use the property for a second campus."

And that:

"On May 27, 1968, Mr. Gordon Coates requested the State Board of Education to pass a resolution that would show the land was to be returned to Mr. and Mrs. Gordon Coates."

Further communication with your office reveals that there is no record in any of the Board's meetings indicating that the Board ever formally accepted or rejected the gift of the Coates' farm. Likewise, there is no evidence that an acceptance or rejection was ever executed by the State Board of Education. The statute applicable at the time of the execution of the deed was Section 177.025, RSMo 1959. This section was reenacted without any substantial change and is presently Section 178.060, RSMo Supp. 1967. This latter section states in full as follows:

"The state board of education may receive and administer any grants, gifts, devises, bequests or donations by any individual or corporation to the Missouri School for the Blind at St. Louis and the Missouri School for the Deaf at Fulton. Grants, gifts, devises, bequests or donations made for a specified use shall not be applied either wholly or in part to any other use."

With respect to official actions of the Board, we note that Section 160.080, RSMo 1959, which was applicable at the time of the Coates' deed, stated:

"At all meetings of the board five members shall be necessary to constitute a quorum for the transaction of business, but no official actions may be taken unless a majority of the whole board may vote therefor."

Further, Section 160.090, RSMo 1959, which was also applicable at the time of the execution of the deed, stated in part:

"3. . . . No member of the board shall have any authority as an individual by reason of his official position, but said

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board may act only when lawfully convened in a regular or special meeting, and it may speak only through its official records."

The provisions cited above were repealed and reenacted without change in substance in Section 161.082, RSMo Supp. 1967, effective July 1, 1965.

It is clear that the law provides that no official actions may be taken by the Board unless a majority of the whole Board votes therefor. It is also clear that action taken by an administrative officer of the State Department of Education without authorization of the State Board of Education is void and not binding on the Board.

Returning to Section 178.060, RSMo Supp. 1967, we wish to point out that the State Board of Education may receive and administer any such gifts. The State Board is not required to take or receive or administer any such gifts and in order for the Board to officially take any action, they must do so in accordance with the provisions requiring a quorum for the transaction of business and a vote of the majority of the whole Board.

In view of the facts submitted to us, it is our opinion that the Board of Education never accepted the Coates' property.

The wisdom of the Legislature in requiring official action is demonstrated by the confusion which has resulted from an informal approach to the purported acceptance of the property and the resultant difficulties concerning a meeting of the minds with the grantors respecting the use of the property.

We conclude that since the Board of Education failed to accept the property, it is now free to either accept or reject. That is, the State Board may formally convene at a regular or special meeting in accordance with the provisions of the statute and at that time may either formally accept or may formally reject the grant of the property. If the Board of Education rejects the grant of the property the rejection should be clearly shown in its minutes and a rejection in writing should be duly authorized and executed. In addition, since the Coates' Quit Claim Deed was recorded in the Recorder's office in St. Charles County, the Board should authorize the execution of a Quit Claim Deed to the Coates with respect to the property and the documents evidencing the Board's official rejection of the property as well as the Quit Claim Deed should be recorded with the Recorder of Deeds in said county.

Yours very truly,

NORMAN H. ANDERSON  
ATTORNEY GENERAL