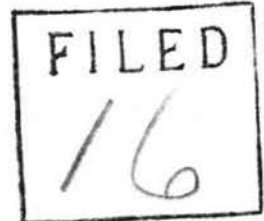


CITIES OF THIRD AND FOURTH CLASS:

City may convey park property to a school district without a vote of the people providing the park property is not conveyed to the city by dedication.

March 15, 1938



Mr. J.G. Christy,  
Member of the  
House of Representatives,  
Festus, Missouri.

Dear Sir:

This will acknowledge receipt of your request for an official opinion from this office, which is as follows:

"Am enclosing a question upon which we would like the decision of your department."

"About fifteen years ago the Festus Lions Club purchased several acres of land in the City of Festus and deeded about fifteen acres to the City of Festus for a park. About three or four acres of this land joins the two acre tract on which the Festus High School building is located.

The Lions Club would like to have this three or four acres deeded to the Festus school district now to enlarge the present school site to at least five acres so a two thousand dollar grant could be secured from the state public school fund if an additional building is erected. Can this be deeded by the City Council to the Festus School District without a vote by the people if it is agreeable to the City Council and the Board of Education?"

Section 6719 R.S. Mo. 1929 refers to powers of mayor and aldermen of cities of third class. Section 6946 R.S. Mo. 1929 refers to powers of mayor and aldermen of cities of fourth class. Both sections provide that a city of either class may purchase,

hold, lease, sell or otherwise dispose of any property, real or personal, it now owns or may hereafter acquire. The sections do not provide for an affirmance of the sale by a vote of the people or residents of the cities.

You state in your request that the Festus Lions Club deeded about fifteen acres to the City of Festus for a park. We will answer your request on two theories. One theory being that the Lions Club deeded the fifteen acres outright without any reservations or particular description as the purpose of the conveyance to the city. The other theory will be that the Festus Lions Club conveyed the fifteen acres to the City of Festus for park purposes only. In all cases of a grant of lands for public purposes such as a park, in case of abandonment of the property, the title reverts to the original grantor. According to 18 Corpus Juris, page 38:

"Dedication is the appropriation or gift by the owner of land, or of an easement therein, for the use of the public."\* \*

If the property was conveyed by the Lions Club to the City of Festus for public purpose, it would not be considered a diversion if transferred by the city to the city school district for school purposes. In the case of Reid v. Edina Board of Education, 73 Mo. 295, the Court held:

"On one of the blocks laid down on a town plat were written the words 'Public Square.' In an explanatory memorandum attached to the plat this block was declared to be 'public property for the purpose of containing the court house should the town be selected for the county seat,' and in writing in the form of a deed upon the back of the plat, the grantor forever quitclaimed to the county, for public uses, this block, together with the streets and alleys indicated, 'according to the within plat or plan of said town, which shall be and remain the property of said county for the purposes aforesaid forever.' It was held that the block in question was dedicated to general public uses, and not simply to use as a courthouse square. The erection of a public school building

upon it was a legitimate use. Reid v. Edina Bd. of Education, 73 Mo. 295."

In the case of J.W. Gaskins et al. v. Ivey Williams et al., 235 Mo. 563, l.c. 574; 139 S.W. 117, the Court held:

"The vital question, therefore, is, has it become impossible to use this land for the purpose expressed by the donors in the dedication? The cases cited above refer to situations where there has been an abandonment of the specified use, such abandonment being held to be equivalent to an impossibility. Here we have a case where such use has never been effected or attempted. We do not doubt that when this plat was filed the fee in block 29 passed to the county in trust, to be used for courthouse purposes, and so long as the property might be so used the fee remained in the county as such trustee. It is not, however, as respondents contend, an absolute, unqualified ownership in the county. It cannot be such if, as stated above, the property may revert by a complete abandonment or impossibility of use. When this plat was filed, there was what appeared to the owners of the ground, and to the community, every indication that the county seat would be there located, and, of course, the dedication was made in consideration of such expected location; but when the county seat was permanently located at Caruthersville, did it not become impossible for the county to execute the trust by using this block for courthouse purposes? We think it did." \* \* \* \* \*

The same finding was also held in the cases of Kansas City v. Scarritt, 169 Mo. 471 and Campbell v. Kansas City, 102 Mo. 326.

In the case of dedications of lands for public purposes it becomes necessary to look into the form of conveyance from the grantor to the city. If the conveyance from the Lions Club to the City of Festus transferred the title to the city for park purposes, the city could not convey same to the school

district for school purposes. This would be an abandonment of the property for park purposes and the property would revert to the Lions Club. If the fifteen acres was transferred by an ordinary deed not containing specific use of the property and did not contain terms of a dedication for park purposes, the city could transfer the property without an affirmance by the vote of the people and without consent of the Lions Club. The transfer to the school district could be made by virtue of the powers set out in Sections 6719 and 6946 Revised Statutes of Missouri, 1929. In the case of Town of Montevallo v. Village School District of Montevallo, 268 Mo. 217, property had been dedicated for a public square and the city transferred the property to a school district upon which a school was erected. The city attempted to have the property reverted back to the city on the ground that they had no authority to sell the public square to the school district for school purposes. The case was decided on the question of an estoppel and the school district was allowed to retain the property for the reason that the building had been on the public square for over thirty years, but the Court in rendering its opinion said:

"The grant for its public school use is decidedly more limited and restricted than the original dedication warranted, and the village was without authority to change the purpose of the original grant. It is going too far to say that in dedicating this property to a single public use, and particularly the use of another separate and distinct public corporation as is a school district the requirements of this original grant are complied with."

If the deed from the Lions Club to the City of Festus recited that the fifteen acres was a dedication for park purposes, the city may avert a reversion of the property by having the Lions Club quit claim their reversion interest in the fifteen acres or any part of the fifteen acres to the school district. But the Lions Club waived reversion interest and the city joining in the transfer, the school district could obtain a good title to the property contemplated to be conveyed.

#### CONCLUSION

In view of the above authorities, it is the opinion of

Mr. J.G. Christy

-5-

March 15, 1938

this department that if the Lions Club did not have an interest in reversion, a deed could be given by the City of Festus to the Festus School District without a vote by the people of the city.

It is also the opinion of this office that if the Lions Club did have an interest in reversion it could waive their reversion interest by quit claiming that interest to the school district. After the Lions Club waived their interest in reversion to the school district, the city then could convey a good title to any part of the property waived on by the Lions Club to the school district.

Respectfully submitted,

W. J. BURKE  
Assistant Attorney General

APPROVED:

---

J. E. TAYLOR  
(Acting) Attorney General

WJB:DA