SCHOOLS: School district does not lose building on land formerly used for school purposes by the mere fact of nonuser, and same does not revert with the land to the original owner.

August 23, 1938

Honorable Paul J. Dillard
Prosecuting Attorney
Laclede County
Lebanon, Missouri

Dear Sir:

This Department is in receipt of your letter wherein you request the opinion of this office on the following question:

> "When a tract of land formerly used for school purposes, having thereon a school house, reverts to the grantor because of a non-user for school purposes; does the building revert with the land or remain the property of the school district?"

The manner of acquiring the use and title to school property is contained in Section 9215, R. S. Mo. 1929, which reads as follows:

> "Whenever any district shall select, at the annual or any special meeting, one or more sites for one or more schoolhouses, or the board of education in city, town or consolidated school district, under the provisions of the statute applicable thereto, shall locate, direct and authorize the purchase of sites for schoolhouses, libraries, office and public parks and playgrounds, or additional grounds adjacent to schoolhouse site or sites, and cannot agree with the owner thereof as to the price to be paid for the

> same, or for any other cause cannot secure a title thereto, the board of directors, or board of education aforesaid may proceed to condemn the same in the same manner as provided for condemnation of right of way in article 2, chapter 7, R. S. 1929, and upon such condemnation and the payment of the appraisement, as therein provided, the title of said lot or land shall vest in the board of directors or board of education aforesaid for use in trust for the district and the purposes for which the same was so selected and located. All laws or parts of laws in conflict with this law are hereby repealed."

By statute the title to all classes of school property is vested in the district. Section 9269, R. S. Mo. 1929, provides as follows:

> "The title of all school house sites and other school property shall be vested in the district in which the same may be located; and all property leased or rented for school purposes shall be wholly under the control of the board of directors during such time; but no board shall lease or rent any building for school purposes while the district schoolhouse is unoccupied, and no schoolhouse or school site shall be abandoned or sold until another site and house are provided for such school district."

Under Section 9284, R.S. Mo. 1929, paragraph "Eleventh", at the annual school meeting, the patrons of the district have the following power:

> "To change the location of schoolhouse site when the same for any cause is deemed necessary; Provided, that

> in every case a majority vote of the voters who are resident taxpayers of said district shall be necessary to remove a site nearer the center of said district; but in all cases to remove a site farther from the center of said district, it shall require two-thirds of the legal voters who are resident taxpayers of such school district voting at such election."

General rules relating to "Reversion or Forfeiture" are contained in 24 R.C.L., Par. 35, as follows:

> "Where land is granted for school purposes, the question frequently arises as to whether the condition of the conveyance has been broken with a resulting reversion or forfeiture. The general rule is that a construction involving a forfeiture is not favored, on the theory that since the deed is the act of the grantor it will be construed most strongly against him. The recital in the deed of a substantial consideration negatives the idea of a trust, and willprevent a reverter, unless expressly provided for. In some of the cases it is held that where the condition is once performed, it is satisfied and extinct. And the subsequent discontinuance of the use will not work a reversion or forfeiture. Where there is a dedication of property to school uses, the situation is different. Where the purposes of the dedication fail, the land will revert, Abandonment, in law, is a question of intention, though cessation of use is evidence of abandonment. If land is deeded to a school district for specified school purposes, it cannot be deeded away for other purposes, and so it has been held that ground deeded for use as a public school cannot

> be deeded away to be used as a normal school. The owner of lands may devote and dedicate them to public use, and it is now well settled law that a dedication of lands to public use does not require the existence of a corporation in which to vest the title. Such a dedication will be valid, without any specific grantee in existence at the time the dedic ation is made. The public is an ever existing grantee, capable of taking a dedication for public uses, And if necessary a court of equity will appoint a trustee to hold the title. In general mere statements in the deed that the property is conveyed for school purposes, or is to remain for such purposes, are not construed as conditions or limitations of the grant."

The general rule in regard to what you have termed in your letter as "non-user" is contained in 20 Corpus Juris, Par. 595, p. 1235, as follows:

> "In the absence of statutory provision, the general rule is that mere non-user is not sufficient to constitute an abandonment, if for a period less than the statutory period of limitations, unless accompanied with a failure to pay the compensation, or there must be both a nonuser and an intention to abandon. By statute, a failure for a specified period to construct or operate the public work for which the land was taken will constitute an abandonment. Nonuser in connection with other circumstances may be sufficient to show abandonment."

The general rule with respect to property acquired when the property condemned or acquired vests a fee and when right acquired is an easement, is contained in 20 Corpus Juris, Par. 598, p. 1236, as follows:

> "Where the condemnation vested a fee the general rule is that the land does not revert to its former owner when it ceases to be used for the purpose for which it was condemned. Where a qualified or terminable fee is acquired, and the right to use the land has been lost in one of the ways mentioned above, the title and rights revert to the original owner. Where an easement only was acquired and the right to enjoy the easement is lost, the owner of the fee has the right to reenter and to use the property just as if it had never been condemned, except that the condemning party has the right to enter and remove its property, although it has been held that the right of removal terminates with the consumnation of the abandonment by the condemnor, and also that where condemnor's structures are necessary for the protection of the land of the owner of the fee the condemnor cannot remove such structure. If in the process of removal of condemnor's property the fee owner's property is damaged he may recover therefor."

It appears from your letter dated March 11, 1938, in reply to the letter from this office dated March 8th, that the deed to the school land in question provided that the land would revert to the original owner, and that this school land was purchased by the district in 1927.

In the case of Powell v. Bowen, 214 S.W. l. c. 144, on the question of abandonment, the court said:

> "The defense of abandonment, disassociated from other defenses, e. g., adverse possession, or a failure to pay taxes, has never been recognized as affecting title to real property at common law. For at common law, whatever the rule may have been under the Spanish or Civil law (Tayon

> v. Ladew, 33 Mo. 207), title to real property can neither be gained nor lost by abandonment operating along * * *."

In the case of Hatton v. Railroad, 253 Mo. l.c. 676, the court said:

> "'Abandonment in law is defined to be "the relinquishment or surrender of rights or property by one person to another. * * * Abandonment includes both the intention to abandon and the external act by which the intention is carried into effect." "To constitute an abandonment there must be the concurrence of the intention to abandon and the actual relinquishment of the property, so that it may be appropriated by the next comer." * * *'"

On the question of ownership of the school building, if the land has been abandoned for school purposes and has reverted to the original grantor or his assigns, we do not find a Missouri case where the title to school buildings on such lands is involved, but we do find some railroad cases where the title to the railroads, fences, and depots on abandoned railroad property is involved, and as we think these cases are somewhat analagous to the school building cases, we are referring to them here.

In Hatton v. Railroad, 253 Mo. l.c. 677, the court said:

> "But even should we be in error as to this, and even if defendant has already abandoned rather than simply expressed an intention to abandon when it shall have sold its fences and its bridges, and shall have taken up its rails, does this transfer the title to these rails from the defendant to the plaintiffs, as assignees--presumably--of the original grantors? This is the itching question in this case. Shall defendant lose its rails because from the early part of the

> year 1902 till the month of May or June, 1905, it ran no engine, or cars, or trains over the road? There can be no natural justice in such a claim. Upon the facts before us defendant has been guilty of no acts making meet as fit punishment such a severe penalty; nor have plaintiffs by anything appearing in the record, done any acts or expended money for labor, or erected improvements on the right of way, or suffered any losses or hardships at defendant's hands which entitle them to so great compensation. The law, as has been said, views a forfeiture with the same dislike as nature looks upon a vacuum. If there is so harsh a rule it ought to be well settled in reason, before it shall be allowed to override the crying equities of the facts before us.
>
> "We think that there is but one view that, where the railroad is a trespasser and in most cases and for most purposes, rails, ties, bridges and other paraphernalia formerly personal property, when affixed to the soil, become real estate. But that is not the case when a dispute arises between the railroad company, or its assignees, and the owner of the servient estate, in those cases where the dominant estate has arisen from consent express or implied. Where a house, a depot or other structure is erected by the railroad upon the land of another pursuant to an act of trespass, or <u>without any permission</u>, then the structure becomes a fixture and may not be removed. (Hunt v. Railroad, 76 Mo. 115.) This is but a stating as a truism, the converse of the general rule as to fixtures, which is: That structures erected upon the land of another <u>with the consent of such owner</u>, continue to be personal property."

In the same case, at l.c. 679, the court also said:

> "'The presumption is that rails and similar structures placed by a railroad company upon land taken by it for a right of way are affixed to the land with a manifest intention to use them in the operation of the railroad, and hence, are not to be regarded as fixtures forming part of the real estate.' * * * *"

Again, at l.c. 681-682, the court in said case said:

> "'The fact that the estate conveyed by the grantor to the grantee reverted to the former, upon the abandonment of the railroad, and that the grantor entered upon the possession of the land, did not in our opinion prevent the vendee of the grantee from removing the structure erected by the former, in accordance with the terms of the grant. The erection was entirely consistent with the grant and with the uses and purposes for which it was made. It did not, therefore, become a part of the realty, but was a part of the estate granted, and, upon the reversion thereof, remained the property of the grantee. The right to sell the same was no greater than the right of removal and, then sold, the vendee had the same right to remove as had his vendor.'
>
> "The rule deduced by 33 Cyc. 226, upon the several questions of abandonment, reverter and forfeiture of the rails and other alleged fixtures to the owner of the servient estate, is in entire consonance with these views, and is thus stated:
>
> "'Where a railroad company having an easement in land for a right of way or other railroad purposes abandons or forfeits the right to the same or a portion thereof, the title and right to the land abandoned

> or forfeited reverts and entitles a recovery thereof by the grantor, or the then owner of the servient estate; and even where the servient estate has been transferred to another, the abandoned or forfeited land reverts to the original grantor if the deed or grant expressly so provides, or the reversionary interest has not otherwise passed out of such grantor. Under some statutes this reversion takes place without a reconveyance or order of court, upon the owner's retaking possession of the property. If the grantor who is in possession and control of the property in the bona fide belief that the company has abandoned the same conveys it to a bona fide purchaser, the railroad company is estopped to assert any easement under its deed against such purchaser. A reversion for an abandonment, however, does not take effect until there is an actual abandonment. Where the company's occupation of the land is not illegal, its rails and other structures thereon do not become a part of the realty, and it should have a reasonable time in which to remove them, upon abandonment; and the fact that the landowner has been allowed to take possession of the land embraced in the right of way and hold it for a term of years less than is required to extinguish the company's easement does not imply relinquishment by the company of its right to enter and remove its structures.'"

CONCLUSION

From the foregoing authorities, if the school district has actually abandoned the school site for school purposes, then the lands revert to the original grantor or his assigns. However, such abandonment does not carry with it the school building or other buildings placed on such lands by the

school district. By the rules stated in the foregoing authorities, the buildings belong to the school district, which has a reasonable time to remove them from its lands if and when the same are abandoned.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney General

APPROVED:

_____

J. E. TAYLOR
(Acting) Attorney General

TWB:HR