SCHOOLS AND SCHOOL DISTRICTS: School property does not revert by reason of the temporary non-use of the school premises.

January 31, 1944

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Honorable Andrew Field
Prosecuting Attorney
Caldwell County
Hamilton, Missouri

Dear Sir:

This is to acknowledge receipt of your letter, in which you request the opinion of this department. We are herewith setting forth in full your letter of request for the reason that it contains the statement of facts upon which we base our opinion, together with the questions to be answered. Your letter reads as follows:

> "On August 5, 1912, one, George W. Houghton and wife, of Caldwell County, conveyed to School District No. 48 of said County, one half acre of land, described by metes and bounds, out of the Northwest corner of the Northeast Quarter of the Northeast Quarter of Section one (1), Township Fifty-five (55), Range Twenty-nine (29), which metes and bounds descrption will full appear by reference to a copy of the deed herewith enclosed, for school purposes. The recited consideration for said conveyance was $1.00.
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> "Said deed contained a proviso, or reservation as follows: 'Provided, however, that in the event said property should ever cease to be used for school purposes, the title thereof shall revert to and vest in the then owners of said N.E. 4/N.E.4/ of said Section one.'
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> "A school house was erected upon said one half acre soon after said conveyance, and a public school was conducted and maintained in said building and premises from and after said date until about 1940, and the school district No. 48, was designated as the 'New Houghton' school.

"In the year 1940 the Board of Directors of said district ceased to use said building and grounds as a Public School, and all the pupils in that district were conveyed by bus to the Mirible Consolidated District located about two miles from said school house, and said pupils are still being conveyed to, and are attending, said Mirible Consolidated District.

"Several years after making the above mentioned conveyance, both the said George W. Hoghton and wife died, and the above mentioned forty acres adjoining said school grounds, has descended to, and is owned by one, Wayne Houghton, a son of the said George W. Houghton and wife. And, as the present owner of said adjoining forty acres, the said Wayne Houghton is claiming said described half acre tract, together with the temporarily unused school building thereon. He claims it under the proviso in said deed, and is trying to sell the school house to third parties, on the ground that it has ceased to be used for school purposes, and consequently belongs to him under said proviso.

"The School Board of the said New Houghton District, No. 48, contends that their failure to use said buildings and grounds for school purposes, since 1940, and their transportation of the pupils of said district to said Mirible Consolidated District, does not constitute a cessation to use said buildings and grounds for school purposes, as contemplated in said proviso: That the highways over which the pupils of said district to said Consolidated District school, are fast becoming impassible during certain portions of the school year, and that said School Board may soon be compelled to again resume the use of said New Houghton School building and grounds, as it has been used prior to 1940. They are therefore protesting the claims of the said Wayne Houghton to the ownership of either the grounds or building in said deed described, and especially are contending that the said Wayne Houghton has no right to sell and remove said School building, even though said half acre of ground itself may have reverted to the said Wayne Houghton under said deed, which reverter they also deny.

"From the above facts, I submit to your office the following questions of law:

> "1. Does the non-user of said grounds and school building for school purposes since 1940, constitute a cessation of the use of said property for school purposes so as to work a reverter thereof to the present owner of the adjoining premises, under said proviso in said deed?
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> "2. Assuming that there has been a reverter of the one half acre of ground that was conveyed in 1912, on which a school house was thereafter erected, does the reverter of the half acre carry with it the title and ownership of said school building, so that, the present owner of the reverted half acre has the right to sell and dispose of said school building?"

You have also enclosed with your letter a General Warranty Deed, dated August 5, 1912, by and between George W. Houghton and Mary A. Houghton, his wife, parties of the first part, and School District No. 48 of Township 55 Range 29 of Caldwell County in the State of Missouri, party of the second part, in consideration of the sum of One Dollar, conveying to the above school district lands described therein containing about one half acre of land, more or less, which said deed contains covenants of general warranty, duly acknowledged by the grantors therein, and in which deed there is this provision; "Provided, however, that in the event said property should ever cease to be used for School purposes, the title thereof shall revert to and vest in the then owners of said N.E.4/ N.E.4/ of said Section one."

We shall answer your questions in the order stated in your letter.

Under the provisions of Section 10403, RSMo. 1939, it is provided in part:

> "The title of all schoolhouse sites and other school property shall be vested in the district in which the same be located; * * * * * * * * *"

The question to be determined is whether or not there has been an abandonment of the land in question by the School district and by reason of said abandonment the title has reverted to the present owner of the quarter quarter section above described.

The general rules relating to reversion, or forfeiture of school property, are stated in 24 R.C.L. at paragraph 5, and is substantially the same words, in Am. Juris. Vol. 47, under the title of "school" Section 69, 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 revision

> 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 will prevent a reverter, unless expressly provided for. In general, mere statements in the deed that property is conveyed for school purposes, or is to remain for such purposes, are not construed as conditions or limitations of the grant. In other cases, however, the language of the deed may constitute a condition upon the breach of which the land will revert or the title vest in the grantor or his successors, unless the right of the grantor to insist upon a forfeiture is waived, as where he fails to object to a failure to erect or maintain a schoolhouse. But a grant of land for use for school purposes, coupled with a condition subsequent, will not warrant a forfeiture by implication on account of an additional use. In some of the cases it is held that where the condition is once performed, it is satisfied and extinct, so that subsequent discontinuance of the use will not work a reversion or forfeiture."

The general rule as to nonuser is contained in 20 Corpus Juris, para. 595, p. 1235, as follows:

> "In the absence of statutory provision, the general rule is that mere nonuser 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. * * *"

And further, a clear statement of abandonment is stated by the Missouri Supreme Court in Hatton v. Railroad, 253 Mo.660, l.c. 676, as follows:

> "In the case of Hickman v. Link, supra, the rule was thus stated:
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> "' 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." (1 Am. and Eng. Ency. Law, p. 1 and note 5.)'"

A forfeiture of land deeded for school purposes is not favored by the law, and since a forfeiture is in the nature of a penalty, it will be strictly construed against the person who seeks the forfeiture. Under the statement of facts set forth in your letter, and applying the rules of law enunciated above, we are of the opinion that there has been no abandonment of the land in question sufficient to work a forfeiture. From your letter we understand that at the present time, by reason of expediency, the School Board of District No. 48, designated as the "New Houghton" school, is merely sending the pupils of that district to another school, namely, the Miriable Consolidated District. We take it from your letter that it is merely a temporary arrangement and at any time the New Houghton School District Board may use the New Houghton School building and half acre of ground for school purposes.

Replying then to your first question, our opinion is that there has been no reverter of the half acre of land in question, so that the owner of the quarter section does not become the owner of the half acre of land deeded for school purposes.

As to the title to the school building in question, which you state the owner of the forty acre tract claims and is trying to sell to third parties on the ground that it has ceased to be used for school purposes, and, consequently, belongs to him, under said proviso, since we have held that the real estate upon which the school building is situate has not reverted to Mr. Houghton, the owner of the forty acre tract, it is our opinion that he has no right, title or interest in the school building itself. Even though we had held that the half acre tract of land had reverted to him, under the authority of the case of Hatton v. Railroad, supra, the school district would have the right to remove the school building from the land.

CONCLUSION

It is, therefore, the opinion of this department that Mr. Wayne Houghton has no right or title to the half acre of land in question, and does not own or have any right to sell or dispose of the school building now located thereon.

Respectfully submitted,

APPROVED:

COVELL R. HEWITT
Assistant Attorney General

ROY MCKITTRICK

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