KANSAS CITY SCHOOL DISTRICT:
GENERAL OBLIGATION BONDS:
BLEACHERS:

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Proceeds from the sale of General Obligation Bonds of the Kansas City School District, issued pursuant to a favorable vote on May 29, 1951, of more than two-thirds of the electors voting at a special election, may be used for the construction of bleachers and accompanying facilities on athletic fields on public high school sites owned and operated by the Kansas City School District.

December 31, 1953

Honorable Ray O. Joslyn
President School District of
Kansas City,
1010 West 39th Street,
Kansas City, Missouri

Dear Sir:

I am in receipt of your request, in which the school district of Kansas City joins, for an opinion on the question:

> "May proceeds from the sale of General Obligation Bonds, of the School District, issued pursuant to vote of more than two-thirds of the electors voting at a special election, in accordance with the provisions of Sec. 165.497 RSMo 1949, be used for the construction of bleachers and accompanying facilities on athletic fields on public high school sites owned and operated by the school district?"

You inform us that the public notices of the election and the printed ballots used at the election, which was held May 29, 1951, read:

> "A proposition authorizing the Board of Directors of the School District to borrow on behalf of the School District the sum of $18,000,000 for the purpose of purchasing sites for school houses, janitors' houses, repair buildings, and supply houses used in operation and maintenance of the schools, public library buildings containing offices of the Board, art galleries and museums, in said School District, or additional ground attached to sites already owned, and of erecting school houses, janitors' houses, repair buildings, and supply houses used in operation and maintenance of the schools, and library buildings containing offices of the Board, art galleries and museums, and building additions to, remodeling and reconstructing buildings existing at the time of making the loan, and furnishing same, within said

> School District, and for the payment thereof to issue bonds of the School District, which bonds may be issued from time to time in various series;"

The aforesaid ballot, based upon the aforesaid Section 165.497, supra, lists the purposes for which the money to be raised by the General Obligation Bonds was to be used. We believe that the expenditure of any money which was raised by the General Obligation Bonds must fall within the classification of at least one of the purposes stated in the ballot for which the money to be raised was to be expended. The purposes are stated in the ballot which has been printed above.

An examination of the purposes itemized make it clear that the only one of these classifications into which bleachers could come would be "school houses", which word we assume to be synonymous with "school buildings".

The Supreme Court of Missouri has held in State ex rel School District of Kansas City v. Thompson, 327 Mo. 144, 36 S.W. 2d, 109, that it is lawful under the constitution and the statutes for a School District to issue such bonds serially from time to time as part of the aggregate issue authorized by such an election, and it has held in Hart v. Board of Education, 299 Mo. 36, 252 S.W. 44, that the only matters to be submitted to the electors is the question of whether or not to incur the loan in the amount submitted, the determination as to which particular projects or buildings within the class submitted should be constructed, is a matter for the discretionary determination of the School Board and the inclusion of various separate and distinct projects in one proposal to incur the loan does not render the proposal multifarious. See also Kellams v. Compton, 206 S.W. 2d 498, 4 A.L.R. 2d 612, in which incidentally one of the purposes of the bond issue was to build bleachers at an athletic field.

We have noted the memorandum of Mark W. Bills, Superintendent of Schools, dated November 24, 1953, and the attached letter of Dr. Roscoe B. Shores, Deputy Superintendent of Schools of the School District of Kansas City, dated November 30, 1953, relating to this matter. We particularly note Mr. Bills' statement that:

> "The holding of athletic contests and exhibitions and similar events are a part of the legally established and recognized courses of physical education promulgated by the State Board of Education pursuant to Sections 163.250 to 163.300, inclusive, RSMo 1949. * * *"

The question thus appears to resolve itself into one of whether bleachers erected on an athletic field come within the classification and definition of "school house" and "school building."

In the case of In re Savannah Special Consolidated School District, 44 So. 2d 545, at l.c. 547, the Supreme Court of Mississippi stated:

> "As to objection number two, umbrage was taken at the language of the petition, as set out in the second paragraph of this opinion. The language of Section 6370, Code of 1942, is '* * * erect, repair, and equip school buildings.' We think a gymnasium is a school building, within the meaning of the statute. See Nichols v. Calhoun et al., 204 Miss. 291, 37 So. 2d 313, where this Court held that a stadium is a school building within the meaning of the statute authorizing the issuance of municipal bonds for the erection of school buildings. Assuredly, they could either erect a new one, or repair the old one. 'Improving water system' was equipping a school building, because water and its distribution are necessities. 'Repair and reroofing school buildings' manifestly constitute repair within the meaning of the statute. If the purposes to be accomplished are within the purposes specified by the statute, they are within the statute. Ashcraft v. Board of Supervisors, supra."

In the case of Gibson v. State Board of Education, 148 S.W. 2d, 329, the Supreme Court of Arkansas held that a gymnasium was a school building within the meaning of their statute.

The leading case sustaining such use of bond moneys under similar statutory and constitutional provisions is Alexander vs. Phillips, 31 Ariz. 503, 254 Pac. 1056, 52 A.L.R. 244, decided by the Supreme Court of Arizona in 1927. In that case the statute authorized the issuance of bonds pursuant to election of the electors residing in the district "for the purpose of raising money for purchasing or leasing school lots, for building school houses, and supplying same with furniture and apparatus, and improving grounds." The proposal submitted to the voters was whether bonds of the Phoenix Union High School District should be issued in the amount of $80,000.00 for the purpose of erecting a stadium for the Phoenix union high school. The Court held that the building of a stadium for athletic contests was within the terms of the phrase "for building school houses" as found in the statute. Finding that athletic contests and exercises are part of the legally recognized courses of instruction and training in the schools, the Court said (52 A.L.R., l.c. 247)

"We therefore hold that the proper definition of a 'schoolhouse' within the meaning of P. 2736, supra, is: Any building which is appropriated for a use prescribed or permitted by the law to public schools.

"While the purpose of the public school and its justification for existence is always the same, like all other human institutions, it changes from time to time in the methods by which that purpose may be carried out."

In the course of its opinion, the Court further said:

"But, with our modern industrial civilization, a great change has come over the land. At present over half our population is urban, with little no chance for physical training for children in the home, and with the increase of human knowledge we are beginning to realize that the work of the farm and home even in the rural districts does not generally give a complete or properly rounded physical development. For this reason the new generation of educators has added to the mental education, which was all that was given by the public schools of the past, the proper training of the body, and a gymnasium is now accepted to be as properly a schoolhouse as is the chemical laboratory or the study hall.* * *

"We thus see that the branches of human knowledge taught in the public schools have been vastly expanded in the last few generations. Has this expansion been sufficient to bring within its scope a structure of the class in question? It is a well-known fact, of which this court properly takes judicial notice, the large majority of the higher institutions of learning in the country are erecting stadiums differing from that proposed for the Phoenix Union high school only in size, and it is commonly accepted that they are not only a proper but almost a necessary part of the modern college. This is true both of our privately endowed and our publicly maintained universities. That athletic games under proper supervision tend to the proper development of the body is a self-evident fact. It is not always realized, however, that they have a most powerful and beneficial effect upon the development of character and morale. To use the one game of football as an illustration, the boy who makes a successful football player must necessarily learn self-control under the most trying circumstances, courage, both physical and moral,

> in the face of strong opposition, sacrifice of individual ease for a community purpose, teamwork to the exclusion of individual glorification, and above all that 'die in the last ditch spirit which leads a man to do for a cause everything that is reasonably possible, and, when that is done, to achieve the impossible by sheer will power. The same is true to a greater or lesser degree of practically every athletic sport which is exhibited in a stadium.
>
> "It seems to us that, to hold things of this kind are less fitted for the ultimate purpose of our public schools, to wit, the making of good citizens, physically, mentally, and morally, than the study of algebra and Latin, is an absurdity. Competitive athletic games, therefore, from every standpoint may properly be included in a public school curriculum. The question then is, Does the law of Arizona so include them?"

And with respect to the propriety of providing a stadium for the seating of spectators the Court said:

> "If physical education be one of the special subjects permitted by law, it is a matter for the reasonable discretion of our school authorities as to how such subjects should be taught, and no parent who has ever had a child participate in any form of the athletic games and contests recognized and given by the various schools of this state, and who has noted the increased interest shown and effort put forth by the participants when such games and sports are open to the view of their schoolmates, friends, and parents, both in intra and inter mural competition, but will realize the educational value both of the games and of a suitable place for giving them."

And the Court finally concluded:

> "For the foregoing reasons, we are of the opinion (1) that physical education is one of the branches of knowledge legally imparted in the Phoenix union high school; (2) that competitive athletic games and sports in both intra and inter mural games are legal and laudable methods of imparting such knowledge; and (3) that a structure whose chief purpose is to provide for the better giving of such competitive athletic games and sports as aforesaid is reasonably a schoolhouse within

the true spirit and meaning of P. 2736, supra."

In McNair vs. School District No. 1 of Cascade County, Mont. 288 Pac. 188, 69 A.L.R. 866 (1930) a proposal had been submitted to the electors of the School District to issue bonds in the amount of $90,000.00 "for the purpose of constructing an outdoor gymnasium and athletic field in said district, furnishing and equipping same." The statute relied upon provided for the issuance of bonds of the School District for the purposes, among others, "of building, enlarging, altering repairing or acquiring by purchase one or more school houses in said District; furnishing and equipping the same, and purchasing the necessary lands therefore." The question as stated by the Court was whether the Board of Trustees of the School District had the power and authority under such statute to issue and sell bonds for the purpose of constructing and equipping an outdoor gymnasium and athletic field in connection with a high school. The Court held that it did have such authority under such statute and in the course of the opinion said (69 A.L.R., L.C. 869):

> "Under the heading 'Education,' our Constitution declares that 'it shall be the duty of the legislative assembly of Montana to establish and maintain a general, uniform and thorough system of public, free, common schools.'* * * *
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> "What, then constitutes a 'thorough' system of education in our public schools? By its voluntary act, the state has assumed the function of education primarily resting upon the parents, and by laws on compulsory education has decreed that the custody of children be yielded to the state during the major portion of their waking hours for five days in the week, and, usually, nine months in the year. In doing so, the state is not actuated by motives of philanthropy or charity, but for the good of the state, and, for what it expends on education, it expects substantial returns in good citizenship. With this fact in mind, it is clear that the solemn mandate of the Constitution is not discharged by the mere training of the mind; mentality without physical well-being does not make for good citizenship--the good citizen, the man or woman who is of the greatest value to the state, is the one whose every faculty is developed and alert."

And further L.C. 870:

> "This court has held that the term 'schoolhouse,' as used in the statute, does not mean simply the house, but refers to the entire school plant (State ex rel. Jay v. Marshall, 13 Mont. 136,32 P. 648), and, under statutes at least no broader than ours, it has been uniformly held that playgrounds established and used in connection with public schools are a part of the school plant, and their taking for that purpose is a taking for a public use; that such ground is as essential to the school as is the ground on which the schoolhouse stands. State ex rel. School District v. Superior Court, 69 Wash. 189, 124 P. 484; Independent School District v. Hewitt, 105 Iowa, 663, 75 N.W. 497; Cousens v. Lyman School District, 67 Me. 280; Ferree v. School District, 76 Pa. 376. What playgrounds, with their swings, chutes, teeters, and the like, are to the grade schools, athletic fields are to high schools and stadiums to our universities; the difference is only in extent and dignity, not in kind, and it would seem that, if the first are legitimate parts of the school plant, so are the second and third."

Then referring to the Arizona case of Alexander vs. Phillips supra, the Montana Court said:

> "And in Arizona, where the statutory authority to issue bonds extended only to the purpose of erecting 'schoolhouses,' the Supreme Court found therein sufficient authority to warrant the issuance of bonds for the construction of a high school stadium, to all intents and purposes an 'athletic field and outdoor gymnasium.' Alexander v. Phillips, 31 Ariz. 503, 254 P. 1056, 52 A.L.R. 244. This result was reached by holding that a schoolhouse is a place 'appropriated for a use prescribed or permitted by law to public schools,' and, finding that school boards were empowered to add special courses to the prescribed branches of study and employ instructors, and that the school in question had added physical culture and athletics and employed instructors, the court pointed out the benefits of such training, and then said: 'It seems to us that, to hold things of this kind are less fitted for the ultimate purpose of public schools, to-wit: The making of good citizens, physically, mentally and morally, than the study of algebra and Latin, is an absurdity. Competitive athletic games, therefore, from every standpoint may properly be included in a

> public school curriculum.' and 'a structure whose chief purpose is to provide for the better giving of such competitive athletic games and sports, as aforesaid, is reasonably a schoolhouse within the true spirit and meaning' of the law."

In the case of Jones v. Sharyland Independent School District, 239 S.W. 2d 216, the Supreme Court of Texas held that money voted for the erection of a school building could be used for the erection of a gymnasium. At l.c. 218 of its opinion, the court stated:

> "* * * It has been definitely held in this State that a gymnasium is a school building. Landrum v. Centennial High School District, Tex. Civ. App. 146 S.W. 2d 799. Article 2663a, Vernon's Ann, Civ. Stats., in effect, required that physical education be taught in our public schools and it is apparent that a gymnasium is necessary to the proper teaching of physical education. Therefore, the Trustees of the Sharyland Independent School District would be justified under the constitution and the statutes in using a portion of the proceeds of the sale of these bonds, which were duly voted by the electors of that district, for the purpose of erecting a gymnasium."

It is true that these last two cases cited by us relate to gymnasium, and not to bleachers. However, we believe that a sufficiently close relationship exists between these two subjects to make these cases relevant to the issue herein.

CONCLUSION

It is the opinion of this department that proceeds from the sale of General Obligation Bonds of the Kansas City School District, issued pursuant to a favorable vote on May 29, 1951, of more than two-thirds of the electors voting at a special election, may be used for the construction of bleachers and accompanying facilities in athletic fields on public high school sites owned and operated by the Kansas City School District.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Hugh P. Williamson.

Very truly yours,

JOHN M. DALTON
Attorney General

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