

SCHOOLS: School house may not be sold until another house is provided.

April 26, 1937.

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71

Honorable Leo A. Politte
Prosecuting Attorney
Franklin County
Union, Missouri

Dear Mr. Politte:

This is to acknowledge your letter dated April 24, 1937, as follows:

"During the past year School District No. 44, of Franklin County, has occupied and had control of a portion of the parochial school building at Krakow, and used the same for conducting the public school of that district, and the old district school building has been and still is unoccupied.

"The district has now acquired a new school site, by warranty deed, which has no building thereon, and the district has a permission and intends to use the portion of the parochial school which it has been using until the district grows to such an extent that will justify the construction of a new school building on the site acquired.

"Under these circumstances, has the district the right to sell and dispose of the old school building and site which is now owned, but not used, by the district?"

We understand the facts to be that School District No. 44 has a schoolhouse but that such is unoccupied and we assume for a valid reason. School District No. 44 does not at the present time have a schoolhouse other than the one it contemplates selling.

The answer to your question is found in Section 9269, R. S. Mo. 1929, and reads 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."

We invite your attention to the underscored portion of Section 9269, supra. Said section specifically provides that no schoolhouse shall be sold until another house is provided for such district. The statute uses the words "schoolhouse or school site" and will not permit the sale of either the schoolhouse or school site until a new site and house are provided. School District No. 44 would have a new site but would not have a new school house. Consequently, if it sold the old schoolhouse (even though such is of no value or use or cannot be used as a school house) the statute is very plain and mandatory that such cannot be sold until a new house is provided. School District No. 44 is not providing a new school house.

In Consolidated School District No. 6 v. Shawhan et al., 273 S. W. 182, the Kansas City Court of Appeals said (l. c. 184):

"Under our state law the government of a school district * * * is vested in a board of directors duly elected by vote. Their powers and duties are prescribed by statute. A trust is reposed in them, the execution of which is frequently attended with difficulty and embarrassment. By accepting such trust each director obligates himself to perform the duties as the law directs. * * * *"

As Section 9269, supra, directs that no school house shall be sold until another house is provided, it is our opinion

Hon. Leo A. Politte

3
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Apr. 26, 1937

that school district No. 44 will have no right to sell or dispose of the old school building and site until a new building and site are provided for by the district.

Yours very truly,

James L. HornBostel
Assistant Attorney-General

APPROVED:

J. E. TAYLOR
(Acting) Attorney-General

JLH:EG