

SCHOOLS: School district in order to qualify for central high school building aid must erect building on tract of not less than five (5) acres subject to approval of plans by State Superintendent of Schools.

July 12, 1943



Honorable Roy Scantlin
State Superintendent of Schools
Jefferson City, Missouri

Dear Mr. Scantlin:

This will acknowledge receipt of your letter of recent date in which you request an opinion based on the following:

"This Department has received an application for state aid for a central high school building as provided in Section 10499, R. S., Mo., 1939.

"The Board of Education of the Kidder School District No. 8 of Caldwell County; in its application for the high school building aid, has certified that it has purchased a tract of ten acres of contiguous territory and secured thereon a building which is suitable for a central school, containing one large central building, with separate gymnasium and auditorium which include a modern system of heating, ventilation and lighting. The Board of Education further certifies that the total value of the buildings and site was \$75,500.00, and that the Board actually paid \$5,500.00 for the Kidder College site and buildings. The buildings on the site were erected in 1927. State building aid of \$2000.00 is requested by the Board of Education.

"The newly acquired school site and buildings herein described is the pro-

perty formerly owned by the Kidder College which was a private school. The buildings all seem to be in good condition and constitute a modern and excellent school plant adequate for this district.

"Section 10499, R. S., Mo., 1939, in part, provides that town or consolidated school districts may qualify for the central high school building aid when the following conditions are met:

- "1. Secure a school site of not less than five acres for the central high school building.
- "2. Erect thereon in accordance with plans and specifications approved by the State Superintendent of Schools a building suitable for a central school and containing one large central school, one large assembly and a modern heating and ventilating system.
- "3. That the state shall pay one-fourth of said building and equipment cost, provided that the amount paid shall not exceed \$2000.00.

"The question arising in connection with this application for building aid is whether or not the school district may qualify for the state building aid when the Board of Education purchases the school site with school buildings thereon in lieu of erecting new buildings on the required school site.

"I shall appreciate your advice and official opinion in answer to the following questions:

"1. Does Section 10499, R. S. Mo., 1939, require the actual erection of the new and approved school building on the required site before any district could qualify for the state central high school building aid?

"2. Would the Board of Education comply with the law in qualifying for the state building aid when the school site and completed buildings meet the required specifications for approval?

"3. Would the Kidder School District No. 8 qualify for the maximum \$2000.00 building aid when the actual cost of such property to the district was only \$5,500.00, even though the original cost of the site and erection of the buildings in 1927 was \$75,500.00?"

The statute which concerns itself with the state aid a school district may obtain is found at Section 10499 R. S. Mo., 1939, which reads as follows:

"Whenever a district organized under the provisions of this article has secured a site of not less than five acres for the central high school building of said district and has erected thereon a school building, suitable for a central school and containing one large assembly room for the meeting of the citizens of the district and has installed a modern system of heating and

ventilating, the state shall pay one-fourth of the cost of said building and equipment: Provided, the amount thus paid by the state shall not exceed two thousand (\$2,000.00) for any one district. The state of Missouri shall, out of the general revenue fund of the state, make adequate appropriation for carrying out the provisions of this section and the money due any district shall be remitted by the auditor to the county treasurer of the proper county on receipt of a certificate from the state superintendent of public schools stating that the conditions herein prescribed has been complied with." (Emphasis ours)

In order to construe the terms used in the statute it will be necessary to refer to other authorities for a definition of the word "erect." Funk and Wagnall Standard Dictionary of the English language, 1937 Edition, defines "erect", "To rear or set up, as a building, build." "To construct or establish."

Ballentine's Law Dictionary, 1930 Edition, defines "erect" as:

"While ordinarily 'to erect' has a different meaning from the word 'to move,' it is not true that to erect a building means the present construction and adjustment of its component parts to the smallest detail. Thus, the construction of the foundation, supports, or driveways for the building in its new location would be pro

tanto an erection of the building.
See Red Lake Falls Milling Co. v.
Thief River Falls, 109 Minn. 52, 24
L. R. A. (N. S.) 456, 458, 122 N. W.
Rep. 872."

Webster's New International Dictionary, 1940 Edition:

"To raise, as a building; to build;
to construct; * * * * *

Bouvier's Law Dictionary, 1934 Edition, defines "erec-
tion" as follows:

" * * * * The repairing, alteration,
and enlarging, or the removal from
one spot to another, of a building,
is not erection within the meaning of
a statute forbidding the erection of
wooden buildings; 27 Conn. 332; 2
Rawle 262; 51 Ill. 422. The moving
of a building is not an erection of a
building; 121 Mass. 229; * * * * "

Directing your attention to 21 C. J. 819, this autho-
rity has the following to say concerning the word "erect":

"The word, in its narrowest signifi-
cation, means to build; to build up;
to construct; to raise; to raise
up; to raise and set up in an up-
right or perpendicular position; to
rear or set up; to set up; to lift
up; but by context, it also means
to establish; to institute; to

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found, form, frame, etc. In a broad sense the term may mean to create a particular thing out of its parts. The authority to erect may carry with it certain incidental or implied powers in connection with the erection, such as the power to remove, to purchase, or to do something reasonable or necessary in connection with the erection or its maintenance and preservation.

"Erected. Actually constructed; built; completed.

"Phrases: In the present tense, 'construct and erect,' 'erect a free school-house,' 'erect any buildings therein' 'erect, complete and have ready for operation,' 'erect in any street,' 'erect or cause to be erected,' and 'erect works for refining.' In the past tense, 'erected into a police village,' 'erected, made, or set up,' 'erected or built,' and 'erected under one general contract.' As a participle, 'erecting a building. . . for business purposes,' 'erecting and endowing of an hospital,' and 'erecting or building of any house.'"

And also in 21 C. J. at page 820, we find this paragraph:

"ERECTION. The term, as used with reference to building, means the putting together of the materials that are used therein; putting together the necessary material and

raising it; the putting together of the brick and mortar, wood, and other materials making the construction; construction. It may imply some structure superimposed on the land.

"Phrases: 'Erection, alteration, or repair of buildings and structures,' 'erection and improvements,' 'erection, construction and completion of school buildings,' 'erections for manufacturing purposes,' 'erection of any building,' 'erection of improvements,' 'erections or additions,' 'erection or inclosure,' and 'erections or encumbrances.'"

Looking now to 15 Words and Phrases, 95, 96, on the subject of erection, we find these definitions:

"One of the primary definitions of the word 'erect' is 'to raise, as a building; to build, to construct.' Butz v. Murch Bros. Const. Co., 97 S. W. 895, 897, 199 Mo. 279, quoting Webst. Dict.

" * * * * *

"The term 'erection,' used with reference to building, means the putting together of the materials that are used therein, the putting together of the brick and mortar, wood and other materials making the construction. Scharff v. Southern Illinois Const. Co., 92 S. W. 126, 130, 115 Mo. App. 157.

" * * * * * State ex rel. City of
Chillicothe v. Gordon, 135 S. W. 929,
931, 233 Mo. 383.

" * * * * *

" * * * * * McGary v. People, N. Y., 1
Cow. Cr. R. 338, 343."

Turning now to 30 C. J. S. 1133, 1134, 1135, we find,
under "erect" and "erection", the following:

"Present Tense

"The word, in its narrowest signifi-
cation, means to build, construct,
lift up, raise, raise and set up in an
upright or perpendicular position,
raise up, or to set up; but by context
it also means to establish; to insti-
tute; to found, form, frame, etc.; and
so in a broad sense the term may mean
to combine materials so as to consti-
tute the structure, or to create a par-
ticular thing out of its parts. The
authority to erect may carry with it
certain incidental or implied powers in
connection with the erection, such as
the power to do something reasonable or
necessary in connection with the erec-
tion or its maintenance and preservation,
also the power to purchase or to remove.
Specifically applied to a public struc-
ture, the term implies the furnishing and
equipping of the building, and may be
synonymous with 'equip' and 'furnish';
and in general, it is frequently used
interchangeably with 'construct' see 16
C. J. S. p 1509 note 29. It has been
compared with, and distinguished from,

'build' see 12 C. J. S. p 377 note 25,
'construct' see 16 C. J. S. p 1509
note 40, 'establish,' and 'move.'

"Phrases employing the word are set
out in the note. Other phrases for
which recent adjudications have not
been found see 21 C. J. p 820 notes
45-51.

"Erected

"Actually constructed; built; com-
pleted.

"The term has been held synonymous with
'constructed' see 16 C. J. S. p 1509
note 38, and 'established.' It has
been compared with, or distinguished
from, 'built' see 12 C. J. S. p 378
note 58, 'completed' see 15 C. J. S. p
665 note 4, 'constructed' see 16 C. J.
S. p 1509 note 46, and 'made.'

"Phrases employing the word are set out
in the note. Other phrases see 21 C.
J. p 820 notes 52-55.

"Erecting

"Generally, when applied to building
construction, the term excludes alter-
ing, remodeling, or repairing, unless
these processes amount in fact to the
erection of a new building; but some-
times, although not always, it may in-
clude 'remodeling' and may even be sy-
nonymous therewith.

"Phrases employing the word are set out
in the note. Other phrases see 21 C. J.

p 820 notes 56-58.

"ERECTION. The term, as used with reference to building, means construction, putting together the necessary material and raising it; the putting together of the brick and mortar, wood, and other materials making the construction, or the putting together of the materials that are used therein. It may imply some structure superimposed on the land. In the subjoined notes examples are given of what, under particular circumstances, the term has been held to include, and not to include.

"In common parlance, the erection of a building and the alteration or remodeling of one already existing are distinct and different things; but under particular circumstances, especially where there is a radical reconstruction of a building or the construction of a substantial addition thereto, 'erection,' used in a broad sense, may be equivalent to 'remodeling'; and also, depending on the circumstances of its use, the word has been held sometimes equivalent to, or synonymous with, 'construction' see 16 C. J. S. p 1511 note 93, and 'removal.' It has been compared with, or distinguished from, 'alteration' see 3 C. J. S. p 900 note 43, 'building' see 12 C. J. S. p 382 note 44, 'maintenance,' 'place,' and 'removal.'

"Phrases employing the word are set out in the note. 68. Other phrases for which recent adjudications have not been found see 21 C. J. p 821 note 64-p 822 note 72."

"68. * * * * * (6) 'Erection of public buildings,' as distinguished from 'furnishing' and 'repairing'.
Mo.—Harrington v. Hopkins, 231 S. W. 263, 265, 288 Mo. 1.—Judd v. Consolidated School Dist. No. 3 of Platte County, 58 S. W. 2d 783, 785, 227 Mo. App. 921. * * * * * "

The foregoing paragraph cites Harrington v. Hopkins, 231 S. W. 263, 288 Mo. 1, 10. Under this decision, Woodson, J. had the following to say:

" * * * * * In no sense can the words 'furnishing' and 'repairing' be construed to mean the 'erection of public buildings' as those words are used in the Constitution."

In Allen v. Jackson County Savings & Loan Ass'n, 115 S. W. 2d 7, 9, 232 Mo. App. 1098, the court in paragraph 3, among other things, had this to say:

" * * * * * We think a fair construction of the term 'erected' means 'constructed.' The Wisconsin Supreme Court, in Kosidowski v. City of Milwaukee, 152 Wis. 233, 139 N.W. 187, loc. cit. 188, had occasion to construe the labor law of that state, including the following provision thereof: 'any kind in the erection, repairing, altering or painting'; 'a house, building or structure'. That action grew out of injuries received by a workman while employed by defendant city laying water mains. The

court said, 152 Wis. 223, 139 N. W. 187, loc. cit. 188: 'The setting up of the new water main was erecting within the broad sense of the term. Such term includes any work of creating a particular thing out of parts. * * * The thing worked upon, towit: the waterworks system was a "structure." A structure may be below the surface of the ground as well as above. * * * Any artificial creation is a structure,—such as a canal.' Construction of a reservoir was held to be an 'erection' of a building within the meaning of section 6802, R. S. Mo. 1919. Mo. St. Ann. Sec. 13238, p. 4797, under the theory that construction means the arrangement and union of parts. Brackett v. James Black Masonry & Contracting Co., 326 Mo. 387, 32 S. W. 2d 288, loc. cit. 290."

From the statute quoted in your letter we find that a school district, in order to qualify for central high school building aid, must do the following: (1) Secure a school site of not less than five acres for the central building, (2) Erect thereon in accordance with approved plans a suitable and adequate building for a central school containing one large assembly room and the entire structure heated with a modern heating and ventilating system, and (3) The amount of aid available would allow the State to pay one-fourth ($\frac{1}{4}$) of the building and equipment costs provided this one-fourth does not exceed Two Thousand Dollars (\$2000.00). That is to say, Two Thousand Dollars is the maximum that may be expended under this state aid.

The Board of Education of Kidder School District No. 8 contends that by reason of a favorable and fortunate (for

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them) set of circumstances the board purchased at a bargain price a school building already equipped and in existence, and that whether with the approval of the State Superintendent of Schools or not they should be allowed to qualify for state aid to the extent of Two Thousand Dollars. It would seem from their standpoint that the State Superintendent should assist and encourage them in taking advantage of this opportunity.

We are compelled to disagree with the members of the board for by no forced construction can we read into the statute anything supporting this theory. In disagreeing with the board we must admit that the rule is a harsh one, but we insist that the express terms of the statute must prevail.

Let us examine the situation from the standpoint of legislative intent. Did the Legislature intend to aid and encourage the construction of new school buildings or the purchase of old properties of doubtful and speculative value which might be converted into school buildings? If this school board could buy Kidder College in the present instance, we believe the exception would be a decidedly dangerous precedent in view of the fact that school boards as a whole, if the exception could be followed, could purchase for school building purposes old business structures and other buildings which had outlived their usefulness and were offered for sale at considerably reduced prices. By no stretch of the imagination do we believe the Legislature contemplated encouraging such speculative spending. Such a course must ultimately lead to highly speculative real estate ventures of an impractical and unproductive nature. Such transactions would be without profit or pleasure to the boards involved. The theory might be advanced that in the event the State Superintendent of Schools might approve such a structure an exception be made. We find no provision, either in the statutes or other authorities, for such; and as a school board is a corporation created by the Le-

gislature, a corporation whose actions are limited by legislative action, we believe that such a course would be the beginning of an exceedingly hazardous and unprofitable course of action.

By its very terms, the statute would seem to assist and encourage the erection of new structures bearing the approval of the State Superintendent of Schools.

Having determined that the Kidder School District No. 8 cannot now qualify for aid under the provisions of Section 10499, supra, and cannot, under our interpretation, become eligible to receive state aid, it seems unnecessary to go into the amount this district might receive. However, touching upon this subject, we find that portion of the statute which reads: "the state shall pay one-fourth of the cost of said building and equipment".

The intention of the Legislature was the participation of the state in payment of building and equipment costs up to and including one-fourth of the sums the school boards had actually expended. In this situation the board actually spent Five Thousand Five Hundred Dollars (\$5,500.00); and if the board could otherwise qualify it would seem that one-fourth of Five Thousand Five Hundred Dollars would be the amount the district could ask for under the terms and provisions of the statute. In this case the sum is less than Two Thousand Dollars, the maximum allowed. The fact that the building and adjoining acreage was worth far in excess of that amount would have no determination on the figure allowed under the statute. Payment, as intended by the Legislature, is on the basis of the amount actually expended and not on any other theory. Any other conclusion would seem to encourage speculation and controversy.

We commend the Kidder School District for having members of the board that are farseeing and enterprising

enough to recognize the fact that the college property is worth far more than the purchase price. The denial of their application under this set of facts will work a hardship no doubt, and in the minds of some render a grave injustice. These members may seem to have been penalized for their business judgment in this transaction. We must agree that the rule is a harsh one, but viewed in the light of the statutes as they now exist, we can arrive at no other conclusion.

CONCLUSION

Our conclusion in answer to your specific questions will be taken up in the order set out in your letter.

1. Does Section 10499 R. S. Mo., 1939, require the actual erection of the new and approved school building on the required site before any district could qualify for the state central high school building aid?

Our conclusion, arrived at from the statute and the interpretation given it by the courts, is that a school district, in order to qualify for state aid, must actually construct a structure on a site, and all this must be done with the approval of the State Superintendent of Schools.

2. Would the Board of Education comply with the law in qualifying for the state building aid when the school site and completed buildings meet the required specifications for approval?

Our conclusion is that approval of the State Superintendent of Schools must apply to new structures, for it was contemplated by the statute as it now exists that the state could only encourage the erection of new structures.

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3. Would the Kidder School District No. 8 qualify for the maximum \$2000.00 building aid when the actual cost of such property to the district was only \$5,500.00, even though the original cost of the site and erection of the buildings in 1927 was \$75,500.00?

Our conclusion is that the Legislature, under the terms of this statute, intended paying on the basis of funds actually expended. That this district could qualify for one-fourth of the \$5,500.00 expended, the basis on which the state would participate in this construction, would be the actual and not the speculative cost.

Respectfully submitted,

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APPROVED:

ROY McKITTRICK
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