SCHOOLS: School District has not abandoned school building
TITLE: and premises so long as it continues to use same for storage of books, desks, and property belonging to the district, and other related uses.

FILED 94

July 6, 1955

Honorable Charles A. Weber
Prosecuting Attorney
Ste Genevieve County
Ste. Genevieve, Missouri

Dear Sir:

This will acknowledge receipt of your request for an opinion which reads:

> "About four or five years ago Charles Rehm who was then Prosecuting Attorney of this County, wrote to your office for an opinion on a deed given to a School District with right of the grantor or his heirs to come in and take possession in the event the property was no longer used for school purposes. About 1948 the School District was reorganized and the property referred to above was no longer used by the district for the holding of classes. However, the books and desks were stored in the building, which I understand is sufficient to come within the meaning 'for school purposes'.
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> "The School District would like to know whether there is any length of time by which they are limited in storing the books and desks so that they would no longer come within the provisions of the deed. Would there be any possible way for the heirs to come in and take possession without the School District first removing the books and desks which are stored in the building?"

Subsequent to receiving your request you informed this department as to the exact form used in the original deed of conveyance which reads:

> "Referring to your letter of June 20th, please be advised that in a deed, dated December 24, 1888, Paul Ritter and wife, gave a deed to a certain School District, which contained the following condition, 'this deed is made on the express condition that if said land be at any time hereafter not used for school purposes, or if the school be moved to some other part of the district then in this event the above lot of ground with the building or buildings thereon shall revert and become the property of said Paul Ritter'."

We find no appellate court decision exactly in point. However, several decisions have been rendered by the appellate courts of this and other states which we believe are analogous and that if the courts were required to construe this deed, under the facts in the case, the decision would likewise hold that the keeping of the books, desks, and other paraphernalia in the old schoolhouse constitutes school purposes.

The only decision we find where the old schoolhouse was used solely for keeping books, desks, and other personal property belonging to said school district was in School District No. 24 v. Mease, 205 S. W. (2d) 146. However, in that case the directors of said school district agreed with another school district to send their pupils to the latter school district. The defendant, who was the holder of the reversionary interest, obtained the key to the old schoolhouse, removed and stored books and desks elsewhere and used the school building for the storage of tin cans used in his business. Furthermore, he plowed up the school yard, deadened trees and, in general, acted and carried on as the fee simple owner of said schoolhouse and premises.

However, the question of whether such storage of books, desks, etc., constituted school purposes was never raised in the case.

The action of the lower court was upheld in a proceeding in ejectment, holding that the appellant had no right to enter and take possession because they had not abandoned it; that the question of abandonment is not as simple as it might appear.

In Board v. Nevada School District, 251 S. W. (2d) l. c. 24, ejectment proceedings were instituted to recover possession of premises formerly deeded for a schoolhouse site. There was a condition in said deed that it should revert when abandoned by the directors and ceased to be used for that purpose; upon this occurring title should immediately vest in the grantors. Both the plaintiff and the defendant claimed under the deed as their common source of title.

School District 119 voted to be annexed to Nevada School District some time in October, 1949. Two days subsequent thereto the Nevada School District adopted a resolution holding that School District 119 should be continued to be operated as a school for the remainder of the term. It was practically agreed that no school was conducted on the premises from May 1, 1950 to May 10, 1951. There was some evidence that said schoolhouse had not been permanently used during this time except for certain committee or organization meetings, occasional 4-H club meetings, and that the keys were carried by the Nevada School Superintendent.

It was held that said School District 119 took, under the deed, an estate in fee simple determinable, in the described property. That it did not construe such words as "ceases to be used for that purpose" to mean a mere temporary secession of said district to conduct a school on said property. Furthermore, that the property did not cease to be used as a shhoolhouse site merely becausd no school was conducted on the property from May 1, 1950 to May 10, 1951. That the matter involved intention as does the matter of abandonment and concluded that the trial court properly found no abandonment, and that the record fully sustains that finding.

In Board of Appling County v. Hunter, 10 S. E. (2d) 749, the Supreme Court of Georgia, in construing a provision contained in a deed conveying certain land for school purposes with a proviso that it shall be held as long as said land and premises are used for educational purposes, and after that said land is to return to grantor, his heirs and assigns, held that the fact that the school board built a larger school on nearby land and permitted school teachers to reside in the old school building would not suffice to show abandonment of property for school or education purposes. The court further said, l. c. 750:

"2. In this suit by the board of educa-

> tion to recover the land from alleged assigns of the grantor, after they had taken possession under an alleged abandonment and reverter, while the court correctly charged that 'the board of education, under the terms of this deed and in the exercise of the rights granted thereunder, is not limited to the use of this land solely for the purpose of classroom work, but the term "school purposes," or "educational purposes" included any activity that is necessary in the proper maintenance and operation of a school under our present school system' in Georgia. It was error to qualify this charge by the further instruction that 'under the terms of that deed the board of education has the right to operate a school upon these premises, and in doing so they have a right to operate and maintain any other activity that is proper and necessary in the operation of such school'. "

In McCullough v. Swifton Consolidated School Dist., 155 S. W. (2d) 353, the Supreme Court of Arkansas construed a deed similar to the one in question, stating:

> " 'Said property to be used for school purposes only, and should the said District No. 23 of Jackson County, Arkansas, at any time abandon said property, the title thereto shall revert back to Hugh B. McCullough or his legal heirs'."

Thereafter, said School District No. 23 was consolidated with Appellee District and later became owner of all the former property and liable for all its debts. Said Appellee District Started tearing down the school building of the former District No. 23 located on the original site. The appellant brought an action to enjoin appellee. Appellee defended on the ground that it did not abandon the land for school purposes, but was tearing it down to build a school building for said defendant district out of material salvaged from the old building; that it was to be used to build a waiting station for pupils who came to meet

the school buses, to be taken to the school in Swifton; also, that it would include a gymnasium. In so holding, the court concluded, page 354:

> "This evidence clearly shows that said property had not been abandoned for school purposes. Now, the conveyance provided the conditions on which the property would revert to the grantor. It could 'be used for school purposes only', and if the District should abandon same at any time, it would revert. If appellant intended to provide in his deed that the property should revert in the event no school was conducted there, or if it should be abandoned as a school, he chose inept language to express his purpose. We think the trial court correctly held that the use to which appellee proposes to put the property is not in violation of the limitations in said deed and that appellee has not abandoned it for school purposes although it has done so as a school."

In view of the foregoing decisions, we are inclined to believe that the keeping of books, desks, and other personal property of the school district is tantamount to continuing to carry on school purposes on said premises, and in such case the school property does not revert to the grantor.

CONCLUSION

Therefore, it is the opinion of this department that as long as said school district continues to use the premises, and especially the school building, for such purposes as storage of school books, desks, and other property belonging to said school district and other related uses, and has not declared its intent to abandon said premises, that said property will not revert to the grantor under said deed.

Honorable Charles A. Weber

The foregoing opinion, which I hereby approve, was prepared by my assistant, Aubrey R. Hammett, Jr.

Very truly yours

John M. Dalton
Attorney General

ARH,Jr:lc