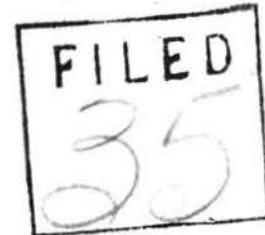


SCHOOL BOARDS: Right of board of directors to control use of school building.

June 15, 1938

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Mr. G. Derk Green,
Prosecuting Attorney,
Linneus, Missouri.



Dear Sir:

We have your letter of June 11th requesting an opinion from this department on the following situation as contained in your letter, which is as follows:

"Members of the school board of school district number six in Linn County have asked that I obtain your opinion upon a question arising in their district. The facts are as follows:

"At the annual meeting held in the school district last spring directors were elected and minutes of the meeting were kept by a secretary. Among other things the secretary made the following entry in the minutes written by her. 'School house to be used for religious, literary or other purposes farm or labor organizations secret or otherwise. If carried decision to be left to directors. Yes--36, no--7.' After this meeting various types of meetings were held in the school house but after a short time some dissatisfaction arose within the district about using the school house for outside purposes. Then, as it is reported to me, the members of the school board met and it was voted to prohibit the use of the building for any purpose or for any meeting other than for school activities or meetings of the school board. Since then the board

refuses to grant permission to any outside organization to use the building. The facts reported immediately preceeding this decision indicated that the building was being used for club meetings after which the members held dances. When this question was voted upon by the directors two of them voted against having or permitting any meetings except for school purposes and one voted in favor of permitting such meetings. After this decision the president of the board caused a padlock to be placed upon the school house door in order to prevent outsiders or others from gaining entrance to the building and using it without the consent of the board. Thereafter the clerk of the district, being the one member of the board voting to use the building for use of outsiders, broke the lock from the door, entered the building and permitted its use for meetings of clubs as it had previously been used.

"Section 9205 provides for care of the school property and that the board of directors may allow the free use of such building for certain purposes unless prohibited by a majority vote of the qualified voters. Two of the directors contend that this gives them authority to pass upon the use to which the school house shall be put, and the clerk contends that the school board has no authority in this but must permit the building to be used for club purposes and that he and others have the right to remove the lock and enter for the purpose of conducting such meetings.

"As I see it the question submitted to you for decision is with reference to the authority of the school board to prohibit the use of the building for outside meetings under these circumstances. This is a very troublesome matter here and we would like a decision as quickly as possible. I have asked them to delay any further meeting until June 20 as I hope to have

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a ruling from your office before that time. I will appreciate it very much if you will advise me immediately concerning this question so I may have the information for the school meeting to be held shortly after June 20."

That part of the statute, Section 9205, R. S. Mo. 1929, applicable here reads as follows:

"The board of directors, or board of education, having charge of the schoolhouses, buildings and grounds appurtenant thereto, may allow the free use of such houses, buildings and grounds for the free discussion of public questions or subjects of general public interest, for the meeting of organizations of citizens and for such other civic, social and educational purposes as will not interfere with the prime purpose to which such houses, buildings and grounds are devoted: Provided, that at any annual or special meeting the use of the schoolhouse for any of the above purposes may by a majority vote of the qualified voters voting on the proposition be prohibited. Such prohibition shall remain in effect until the next annual school meeting."

It can be readily seen that by reason of the above statute providing that the board of directors may allow the use of the schoolhouse for the purposes named, the board of directors, in whose keeping and care the schoolhouse is lodged, had the sole and exclusive right to say when and by whom such schoolhouse can be used for any of the purposes mentioned as will not interfere with the prime purpose to which such schoolhouse is devoted. The only limitation upon the exercise of such discretion by the board is when a majority of the qualified voters of the district, acting in a lawful meeting, vote to prohibit the board from extending such privilege or use for any one or all of the purposes mentioned in the statute.

In your letter you state that the patrons of the district at the last annual meeting undertook to act on the question of the use of the schoolhouse in the following particular, as shown by the records of the board, to-wit:

"School house to be used for religious, literary or other purposes farm or labor organizations secret or otherwise. If carried decision to be left to directors. Yes--36, no--7."

Such action on the part of the patrons performs no function because it was totally unnecessary to delegate to the board the right or discretion to say when or for what purpose the use of the school building should be granted. The board was already invested by law with such right by reason of the provisions of the statute.

That it was the intention of the Legislature in the enactment of Section 9205 to lodge full and complete discretion in the school board as to whether the schoolhouse should be used for purposes other than the prime purpose to which it is devoted, is emphasized by reason of the fact that prior to 1915 the statute law of the state, Section 10784, R. S. Mo. 1909, provided as follows:

"The board of directors shall not allow the use of the schoolhouse or school premises for religious, literary or other public purposes, or for the meeting of any farmer or labor organization, secret or otherwise, except when such use shall be demanded by a majority of the voters of the district at any annual or special meeting."

The Legislature by amendment in the session of 1915 changed Section 10784 to its present form, thus completely reversing the situation by lodging full and complete discretion in the board and taking such right away from the patrons, subject only to the veto power of the patrons if exercised in the proper way.

CONCLUSION

Hence, it is our conclusion that the school board in question has full and complete discretion to say when and for what purpose the schoolhouse can be used, other than the prime purpose to which said schoolhouse is devoted, and if such right or discretion is not prohibited by the voters of the district in the manner prescribed by law, the action of the board by a majority vote in exercising its discretion, if done in good faith, in granting, or withholding, the use of the schoolhouse is binding on the dissenting director and as well on all others. Furthermore, the action on the part of the dissenting director, or any other person, in breaking the lock and entering the schoolhouse, if persisted in, under the circumstances, could lead to serious consequences.

Respectfully submitted,

J. W. BUFFINGTON,
Assistant Attorney General.

APPROVED:

J. E. TAYLOR,
(Acting) Attorney General.

JWB:HR