

SCHOOLS: Directors have the right to refuse to allow the use of a school building for other than school purposes.

October 26, 1942

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Mr. W. A. Williams  
Superintendent of Schools  
Reynolds County  
Centerville, Missouri

Dear Sir:

This will acknowledge receipt of your letter of recent date in which you submit to this office for an opinion the following question:

"Does the board of education have the right to refuse to let the people of the community have Sunday School and church in the school house, if the people voted it open to such services at the annual school meeting?"

The control of the schoolhouse of a school district is governed by Section 10337, R. S. Missouri, 1939. Before considering the provisions of said section which deal with the use of schoolhouses for other than school purposes, we think a study of the history of such provisions will help to arrive at the correct meaning of the section.

We find that Section 7044, R. S. Missouri, 1879, vested in the directors of a district the care and keeping of the schoolhouse and other property of the district, and charged them with the duty to provide the school with necessary equipment. This was as far as the statute went.

In 1881 the Legislature amended said Section 7044 of the 1879 Statutes (Laws of 1881, page 202) by adding thereto the following words:

"Nothing in this section shall be so construed as to prevent the use of any schoolhouse for religious, literary or other public purposes, when such use shall be demanded by a majority of the voters of such district, voting at any annual or special meeting where such question was submitted."

It will be noted by the foregoing provision that the board was authorized to allow the schoolhouse to be used for certain other purposes than holding school "when such use shall be demanded by a majority of the voters of such district."

Said provision regarding outside uses of the schoolhouse remained in the foregoing form until in 1891, when the Legislature (Laws of 1891, page 215) amended the said section containing said provision by including among the purposes for which the building could be let, meetings of any farmer or labor organization or society for educational purposes, whether secret or otherwise, and by adding to said section the following:

"Provided, however, that when the use of the school-house is allowed for the above named purposes it shall be the duty of the party or parties using it to keep it clean and in good repair, and to leave it in as good condition as it was when they took charge of it: Provided, further, that should the party or parties so using the said school-house fail to comply with the provisions of this act, the directors of such district may refuse them the further use of it until said provisions are complied with."

The provisions with respect to the use of the building for other than school purposes remained unchanged until 1909, when the Legislature (Laws of 1909, page 770) repealed said section of the Statutes in which said provisions were

contained and enacted in lieu thereof a new statute, which became Section 10784, R. S. Missouri, 1909. The portion of said Section 10784 regarding the use of the building for other than school purposes read 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: Provided, that when the use of the schoolhouse and school premises is allowed for the above named purposes, they may be so used until the next annual meeting, and it shall be the duty of the person or persons so using them to keep them clean and in good repair, and to leave them in as good condition as they were when they took charge of them: Provided, further, that should the person or persons so using the schoolhouse and school premises fail to comply with the provisions of this section, the board of directors of such district may refuse further use of them until said provisions are complied with."

Said Section 10784, R. S. Missouri, 1909, was repealed in 1915 (Laws of 1915, page 382) and a new section enacted in lieu thereof, which said new section is now Section 10337, R. S. Missouri, 1939, and which reads as follows:

"The board of directors or board of education shall have the care and keeping of all property belonging to the

district, and shall provide the necessary globes, maps, charts, apparatus, supplementary books, and other material for the use of the school. The board shall keep the schoolhouses and other buildings in good repair, the grounds belonging thereto in good condition, and shall provide fuel, heating apparatus, and other material and appliances necessary for the proper heating, lighting, ventilation and sanitation of the schoolhouses; shall have the floors swept and the fires made at the expense of the district, and cause an accurate account of the expense thereof to be kept and a report of the same to be made at the next annual meeting. 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. Whenever any such application shall be granted and the use of such houses, buildings or grounds shall be permitted for the purposes aforesaid, the board of directors, or board of education, having charge of the same may provide,

free of charge, heat, light and janitor service therein when necessary, and may make such other provisions, free of charge, as may be needful for the convenient and comfortable use of such houses, buildings and grounds for such purposes, or said boards of directors, or boards of education, may require all such expenses to be paid by the organizations or persons who are allowed the use of the houses, buildings and grounds. All persons upon whose application, or at whose request, the use of any schoolhouse, building, or part thereof or any grounds appurtenant thereto, may be permitted as herein provided, shall be jointly and severally liable for any injury or damage thereto which directly results from such use, ordinary wear and tear excepted: Provided, however, this article shall not apply to cities which have or may hereafter have 75,000 inhabitants or more."

By referring to the foregoing history of the provisions in question we find that prior to 1881 the school board was charged with the care and custody of the schoolhouse, and was not permitted to allow such schoolhouse to be used for anything other than school purposes. With the statute in that form, the Supreme Court of this state held that the school board was without authority to allow the schoolhouse to be used for any purpose other than the holding of school. (Dorton v. Hearn, 67 Mo. 301.)

The first authority granted by law for the use of the schoolhouse for other than school purposes was that contained in the amendment of 1881, supra, which provided that nothing in the statute granting the school board custody of the school building should prevent the use of same for religious, literary or other public purposes when such use should be demanded by a majority of the voters of the district. Such proviso appears to have been a limitation upon

the control of the schoolhouse vested in the directors. Said proviso, in effect, said that the directors could not prevent the use of the building for other purposes than school purposes if a majority of the voters at an election duly held demanded its use for religious, literary or other public purposes.

By the amendment of 1891, supra, the Legislature enlarged the said provision with regard to allowing the use of the schoolhouse for certain outside purposes when such use should be demanded by a majority of the voters in an election upon that question, but added a proviso making it the duty of the persons so using the building for such purposes to keep it clean and in good repair, and to leave it in as good condition as when they took charge of it. Said latter amendment also granted the board of directors the right to refuse the further use of the schoolhouse for such outside purposes if the parties so using it fail to comply with the provisions regarding the careful use of the building.

It will be seen by the amendment of 1891 that the Legislature undoubtedly understood the provision allowing the voters to demand the use of the schoolhouse for outside purposes as a limitation upon the power of the directors and as a right which the voters had. By said amendment of 1891 the Legislature limited the right of the people to use the schoolhouse for outside purposes, even though such use had been demanded by a majority of the voters, when such use was being abused. In such latter case the directors were authorized to refuse to allow the further use of the building. Therefore, the law, as it stood after the amendment of 1891, contained limitations on both the directors and the patrons of the school in connection with the use of the schoolhouse for outside purposes. Evidently experience had convinced the Legislature that neither the board nor the patrons should be given unlimited right to use the school building for outside purposes.

The new statute of 1909 covering the use of the building provided that "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 organizations, 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 \* \* \* ." This statute of 1909 expressly limited the authority of the board of directors to allow the use of the schoolhouse for outside purposes, but provided that they should not allow such use except when such use had been demanded by a vote of the majority of the voters of the district. Said act of 1909 further provided that in case the persons so using such building for outside purposes should not comply with the provisions of the act regarding the proper care of the building while being so used, the board of directors could refuse the further use of it, but that otherwise when the voters had demanded the use of it at an election, such right of use should continue until the next annual meeting of the voters. The act of 1909 was also both a limitation on the power of the directors to allow the use of the schoolhouse for outside purposes and a limitation upon the patrons of the district using the building. Similar to the act of 1891, the act of 1909 vested in the directors the ultimate decision as to the proper care of the building and as to when the use of the same for outside purposes should be stopped.

The act of 1915, which is now Section 10337, R. S. Missouri, 1939, provided 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. Whenever any such application shall be granted and the use of such houses, buildings or grounds shall be permitted for the purposes aforesaid, the board of directors, or board of education, having charge of the same may provide, free of charge, heat, light, and janitor service therein when necessary and may make such other provisions, free of charge, as may be needful for the convenient and comfortable use of such houses, buildings and grounds for such purposes, or said boards of directors, or boards of education, may require all such expenses to be paid by the organizations or persons who are allowed the use of the houses, buildings and grounds. All persons upon whose application, or at whose request the use of any schoolhouse, building, or part thereof or any grounds appurtenant thereto, may be permitted as herein provided shall be jointly and severally liable for any injury or damage thereto, which directly results from such use, ordinary wear and tear excepted: Provided, however, this act shall not apply to cities which have or may hereafter have 75,000 inhabitants or more."

By the latter act it will be seen that the directors "may allow" the use of the schoolhouse for outside purposes when in their judgment such use will not interfere with the prime purpose to which such schoolhouse is devoted, to-wit, the purpose of conducting a public school. The law as it now stands does not in any way say that the board cannot prevent the use of the building for outside purposes when such use is demanded by a majority of the voters, as did the provisions of the act of 1881. The first part of Section

10337 vests the care and keeping of the schoolhouse in the directors of the district, and then follows the provision that the board "may allow" the use of the building for outside purposes when such use will not interfere with the main purpose to which the building is devoted. Had the act stopped with the last quoted portion, there would have been no limitation upon the right of the board of directors to allow the free use of the schoolhouse for certain outside purposes. However, said statute contains the following proviso:

"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."

Thus, the Legislature evidenced an intention to provide a check upon the board of directors in allowing the use of a schoolhouse for outside purposes. That check is a vote of the majority of the voters of the district. It was evidently the purpose of the Legislature to provide that where directors became reckless or careless in allowing the use of school property for outside purposes, the voters of the district could stop such use of the building by voting against it. The vote against it would hold good until the next annual school meeting. By that time a board might be elected in whom the voters had more confidence and perhaps at that meeting the voters would not restrict the board in allowing the use of the building for outside purposes.

We think it is clear that the statute as it now stands leaves the authority to grant the use of the building for outside purposes to the board of directors, subject only to that right being taken away from them by the voters of the district. Instead of the voters being allowed to demand the use of the building, as they were allowed to under former statutes, they are now given only a veto power over the board of directors. Absent the

exercise of this veto power by the voters, the board has the entire say as to when the building may be used for certain designated outside purposes. The board does not have to wait until the voters tell them they can grant the use of the schoolhouse for such purposes, but they can so allow the use of the schoolhouse until they are stopped by the voters. Therefore, the voters do not vote to open the schoolhouse for outside purposes, but the only vote they have in that regard is to close the schoolhouse against its use for such purposes.

Said Section 10337 further leaves to the board of directors the determination of whether, when they allow the use of the building for outside purposes, the expenses incident to such use shall be provided free by the district or whether such expenses shall be paid by the persons or organizations so allowed to use the building. The statute, therefore, seems to vest the entire matter of determining how and when the schoolhouse may be used for outside purposes in the board of directors, subject only to the power of the voters to restrain them by a majority vote. If the board elects not to allow the schoolhouse to be used for outside purposes, the building cannot be so used. No authority is given the voters under the law as it stands now to compel the board to grant the use of the building for such purposes. The only authority which the voters have in that regard is to prohibit the board from granting the use of the building for outside purposes. They do not have any authority to compel the board to grant the use of the building for such purposes.

In arriving at the above conclusion we have not overlooked Section 10419, R. S. Missouri, 1939, which prescribes the powers of the voters at an annual school meeting. Said section reads, in part, as follows:

"The qualified voters assembled at the annual meeting, when not otherwise provided, shall have power by a majority of the votes cast:

\* \* \* \* \*

"Fifth--To determine, by majority vote, whether or not the schoolhouse of the district may be used during the ensuing year for religious, literary or other purposes, or for the meeting of farmer or labor organizations, secret or otherwise."

Said Section 10419 is clearly a general statute covering the powers of the voters at an annual meeting. It should be noted that the section provides that "when not otherwise provided," the voters shall have power to do the things therein enumerated, one of which is to determine whether or not the schoolhouse shall be used for the ensuing year for certain outside purposes. As we have pointed out above, we think the determination of the right to use a schoolhouse for outside purposes has been "otherwise provided" for by Section 10337, supra, which vests the power of such determination in the board of directors. Of course, by both Sections 10337 and 10419, the voters have the right to vote at the annual meeting on whether the board shall be prohibited from allowing the use of the schoolhouse for the designated outside purposes during the ensuing year.

It is a familiar rule of statutory construction that all statutes touching the same subject matter should be read together and harmonized, if possible, so as to give effect to all of them. (Little River Drainage District v. Lassater, 325 Mo. 493, 29 S. W. (2d) 716.) By reading Sections 10337 and 10419 together, we think they harmonize in that both of them can be given force and effect by holding that the board of directors has the right to determine whether the school building shall be used for certain outside purposes, unless the voters at the annual meeting by a majority vote prohibit the board from so doing.

#### CONCLUSION

It is, therefore, the opinion of this department that in all school districts of this state, except in

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cities having 75,000 inhabitants or more, the board of directors has the right to refuse to let the people of the community use the schoolhouse for civic, social and educational meetings, and the voters of the district do not have the right to compel the board to grant the use of the building for such purposes.

Respectfully submitted

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APPROVED:

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ROY MCKITTRICK  
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