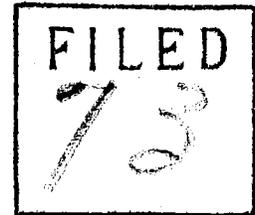


AUTHORITY OF BOARD OF DIRECTORS : 1) May board of directors
OF CONSOLIDATED SCHOOL DISTRICT : buy property that is not to
be used for school purposes,
2) If they do will they be
personally liable.

April 19, 1946



Honorable W. Oliver Rasch
Prosecuting Attorney
Jefferson County
Festus, Missouri

Dear Mr. Rasch:

We hereby acknowledge receipt of your letter of April 10, 1946, requesting an opinion, which reads, in part, as follows:

"The facts are substantially as follows: After the consolidation, the district had on hand a school site and building which it no longer needed and which it offered to the highest bidder. The highest bid was \$1300.00 offered by a returned veteran of World War II, but he asked one of the board members, a local banker, to check with a local abstract company as to the title before paying over the money. After a telephone call from the abstract company stating that the title was clear, a quit-claim deed was given the purchaser and the sum of \$1300.00 was paid to the school district and the amount credited to the building fund of the district. The quit-claim deed has not been recorded. Later the abstract company found a flaw in the title and the purchaser desires to tender back the deed and obtain his purchase money. The school district is willing to pay it back provided their action is legal and will entail no personal responsibility on the part of the directors."

The sale of the property has been completed, and the proceeds from said sale have been credited to the

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building fund. This would seem to be within Section 10471, R.S. Mo. 1939, which provides, in part as follows:

"* * * whenever there is within the district any school property that is no longer required for the use of the district, the board is hereby authorized to advertise, sell and convey the same, and the proceeds derived therefrom shall be placed to the credit of the building fund of such district."

Therefore, your opinion request resolves into merely a question of whether or not the board of directors of a consolidated school district may buy property which it does not intend to use for school purposes, and pay for said property out of the building fund.

Section 10348, R.S. Mo. 1939, provides, in part, as follows:

"Whenever any district shall select, at the annual or any special meeting, one or more sites for one or more schoolhouses, or the board of education in city, town or consolidated school district, under the provisions of the statute applicable thereto, shall locate, direct and authorize the purchase of sites for schoolhouses, libraries, offices and public parks and playgrounds, or additional grounds adjacent to schoolhouse site or sites,
* * * "

Section 10366, R.S. Mo. 1939, as amended, page 893, Laws of Missouri, 1943, provides, in part, as follows:

"All school moneys received by a school district shall be disbursed

only for the purposes for which they were levied, collected or received. There is hereby created the following funds for the accounting of all school moneys: Teachers' Fund, Incidental Fund, Free Textbook Fund, Building Fund, Sinking Fund, and Interest Fund. School district moneys shall be disbursed only through warrants drawn by order of the board of education. Each warrant shall show the legal identification of the district by name or by number as provided by law; shall specify the amount to be paid; to whom payment is made; from what fund; for what purpose; the date of the board order, and the number of the warrant. Each warrant must be signed by the President and the Secretary or Clerk. No warrant shall be drawn for the payment of any school district indebtedness unless there is sufficient money in the treasury and in the proper fund for the payment of said indebtedness."

In repurchasing the property in question with no intent to use it for school purposes we believe the board of directors would not be complying with the foregoing statutes, because they are not purchasing property for the purpose of sites for schoolhouses, libraries, offices and public parks and playgrounds, or additional ground adjacent to schoolhouse site or sites.

In Consolidated School Dist. No. 6 of Jackson County v. Shawhan et al., 273 S.W. 182, the Court held as follows:

"Powers of board of directors of school district are limited to those expressly delegated, and under Rev. St. 1919, Secs. 11159, 11223, in respect to application

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of separate funds, directors are personally liable for misapplication of moneys in teachers' fund to purposes other than payment of teachers.

* * * * *
* * * * *

"Directors of school district are liable for misapplication of teachers' fund to purposes other than payment of teachers, notwithstanding it was done in good faith and without willful intention."

In State ex rel. Brickey v. Nolte, Circuit Judge, et al., 350 Mo. 842, 169 S.W. (2d) 50, the Court held as follows:

"An officer and member of school district board of directors occupies 'fiduciary relationship' to district,"

In School Dist. No. 45 of Pemiscot County v. Correll, 286 S.W. 136, l.c. 138, the Court held as follows:

"Under section 11197, R.C. Mo. 1919, plaintiff district is constituted a body corporate and is capable of suing and being sued. * * *".

The property which the board of directors intends to purchase has been sold due to the fact that it was no longer needed for school purposes within the district. If the board of directors were to repurchase said property we believe their actions would be in direct conflict with the foregoing quotations of Court decisions which limit their powers as those expressly delegated by statute, and that they could be held personally responsible.

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CONCLUSION

Therefore, it is the opinion of this Department that a school board of a consolidated school district does not have the authority to buy property which it does not intend to use for school purposes as set out by Section 10348, R.S. Mo. 1939, and

2) If a board of directors should attempt to do so, and pay for said property by drawing warrants on the building fund they could be held personally liable.

Respectfully submitted,

PERSHING WILSON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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