

SCHOOLS: : District transporting school children to another
: district may not sell school house.
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May 6, 1948.

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Honorable Chas. E. Murrell, Jr.,
Prosecuting Attorney
Edina, Missouri.

Dear Sir:

You have transmitted to this office a request for an opinion from Miss Bessie L. Hudson, County Superintendent of Schools of Knox County, Missouri, which request is as follows:

"A number of inquiries have come to my office concerning the sale of closed rural school buildings, where enrollments are too small to maintain school, but districts still keep their organization and provide for transportation and tuition of children to other schools.

"Please quote the law pertaining to, or, your opinion on the following questions:

"1. Does a school district, with the approval of the voters, have a right to sell a schoolhouse which will no longer be used for school purposes, and let it be removed from the school site?

"2. If so, and the school site has been deeded in such a way that it reverts to the original owner or his heirs, may that district still remain an organized district, if it keeps its board of directors, transacts all necessary school business of the district, and provides satisfactorily for the education of children residing in the district by arranging for them to attend a school in an adjoining district (town or rural), without being consolidated with or annexed to the adjoining or receiving district.

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Mr. Johnson
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"3. If the school building may be sold, how large a vote is necessary to determine the right to sell-a majority or a two-thirds vote?"

"4. Is there any provision by which this sale may be voted upon at a special meeting, or, must the vote upon the sale of school property be confined to the annual meeting only?"

Section 10324, R. S. Mo. 1939, provides that

"* * * in any district enumerating fewer than twenty-five children the board may, from year to year, arrange with the board or boards of other district or districts for the admission of all children of school age in said district containing fewer than twenty-five children enumerated, and, if desired, arrange for transporting children to and from school. And, when ratified by a two-thirds vote of the qualified voters of said school district, voting at a special meeting, such arrangements shall be final, and the board will be authorized to issue warrants upon the teachers' fund for payment of tuition, and upon the incidental fund for the payment of cost of transporting pupils."

Section 10403, R. S. Mo. 1939, reads as follows:

"The title of all schoolhouse sites and other school property shall be vested in the district in which the same may be located; and all property leased or rented for school purposes shall be wholly under the control of the board of directors during such time; but no board shall lease or rent any building for school purposes while the district schoolhouse is unoccupied, and no schoolhouse or school site shall be abandoned or sold until another site and house are provided for such school district."

(Emphasis supplied.)

Section 10419, R. S. Mo. 1939, provides that the qualified voters of a common school district, at the annual meeting, shall have power by majority vote "To direct the sale of any property belonging to the district but no longer required for the use thereof, to determine the disposition of the same and the application of the proceeds."

A school district has the authority to dispose of its property only in the manner provided by statute. In re Farmers and Merchants Bank of Chillicothe, 63 S.W. (2d) 829.

The latter two statutory provisions above quoted are the only ones authorizing the sale of school houses, and are not, we believe, sufficient to authorize the sale of the school building when the school children in the district are being transported to a school in another district, in accordance with with Sec. 10324, R. S. Mo. 1939.

As can be seen, Sec. 10403, R. S. Mo. 1939, authorizes the sale of the school house by a school district only when another building has been provided for such district. The school to which school children are transported under Sec. 10324 is not, we feel, another schoolhouse within the meaning of Sec. 10403. The arrangement for transportation to another district is not a permanent one, being on an annual basis, and might be discontinued. Should the enumeration show an increase in the number of school children to more than 25 in the district which formerly transported its pupils to another district, such practice would no longer be permissible under Sec. 10324.

In view of the foregoing there is no necessity of answering the second question, inasmuch as, in the opinion of this department, the disposal of the school building is not permitted. The same is true of the third and fourth questions. However, Sec. 10419, quoted above, does answer the third inquiry, as it expressly provides that in cases where a sale is permitted, a majority vote is required. When such sale is permissible, it must also be voted upon at the annual meeting, in accordance with Sec. 10419.

Sec. 10361, R. S. Mo. 1939, authorizes special meeting only for purposes "not restricted to the annual meeting." And inasmuch as authorization of sale of property is restricted by Sec. 10419 to the annual meeting, the matter may not be determined at a special meeting.

CONCLUSION.

It is the opinion of this department that in view of the provisions of Sec. 10403, R. S. Mo. 1939, which requires that a schoolhouse may not be sold until another has been provided for the district, a school district which transports its school children to another school district, in accordance with Sec. 10324, R. S. Mo. 1939, may not for that reason alone sell its schoolhouse.

Respectfully submitted,

ROBERT R. WELBORN
Assistant Attorney-General

APPROVED:

J. E. TAYLOR 
Attorney-General

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