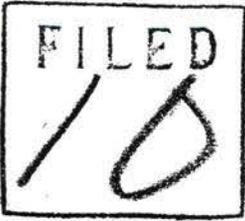


SCHOOLS: School district, in absence of qualifying factors, may not give property to church organization. Such attempted transfer enjoinable by state at relation of prosecuting attorney.

SCHOOL DISTRICTS:



March 1, 1956

Honorable Paul Boone  
Prosecuting Attorney  
Ozark County  
Gainesville, Missouri

Dear Mr. Boone:

This is in response to your request for opinion dated December 17, 1955, which reads as follows:

"Your official opinion is requested in connection with the manner of sale or disposition of school buildings and sites which are no longer needed for school purposes.

"A Consolidated School District in this county has two school sites and buildings which were previously used for school, but are no longer used because the students in the respective communities are now being transported to the central building in the district.

"The Board of Directors of the Consolidated District desire to dispose of the buildings and site in the manner required of them by law. It was not contemplated to sell the cemetery located on the property, but it is the desire of the Board to dispose of the other property.

"The residents of the community where each of the two sites and buildings are located have expressed a desire to retain the buildings in the community for church and other public purposes, although it is feared that some person would bid an amount in excess of

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the amount the local church or other organization would be able to pay in the event the property were advertised and sold in the manner provided by Section 165.370 Revised Statutes of Missouri, 1949.

"The County Superintendent of Schools of this County has written a letter of the State Department of Education explaining the local situation, and asking if the Board of Directors could convey the property to a local organization without a consideration, or for a nominal consideration. An answer has been received to that letter suggesting that the Board of Directors advertise the property for sale under the provisions of Section 165.370, and then reject the higher bids, if any, and accept the bid offered by the local organization of \$1.00, etc. A copy of the reply signed by Geo. D. Enhlehart, Director School Building Services, is enclosed.

"Your opinion is therefore requested as to whether or not the Board of Directors would be within the law by following the procedure outlined in the letter, or whether or not the Board of Directors would be liable under the law in the event of a bid for \$500.00 which would be rejected in favor of a bid for \$1.00 and good will as suggested in the letter?"

Section 165.370, RSMo 1949, to which you have referred in your letter, provides, in part:

" \* \* \* 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."

It has been suggested that, under the factual situation outlined in your request, the board, after advertising the property for sale, would be authorized to reject all other bids which might be received and sell the property to a local church organization

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for a nominal figure, which in essence would amount to a gift to such organization.

With regard to school property, it must be borne in mind that school districts are mere instrumentalities of the state in discharging the duty of providing free education to the youth of the state. Although they are bodies corporate and constitute separate legal entities, they are statutory trustees for the state in carrying out this important function. In fact, it has been held that the property of a district acquired from public funds is state property and not the private property of the school district. In *School Dist. of Oakland v. School Dist. of Joplin*, 340 Mo. 779, 102 SW2d 909, 915, the court said:

" \* \* \* In Missouri the property of school districts acquired from public funds is the property of the state, not the private property of the school district in which it may be located, and the school district is a statutory trustee for the discharge of a governmental function entrusted to the state by our Constitution."

We have found no case in Missouri passing directly on the question which you have presented, but there is a very analogous one from the state of Arizona. In *Prescott Community Hospital Commission v. Prescott School Dist. No. 1 of Yavapai County*, 57 Ariz. 492, 115 P2d 160 (1941), the defendant school district leased certain property to the plaintiff for the purpose of maintaining a community hospital. The term of the lease was for five years at an annual rental of one dollar. The lease was subject to renewal for further terms of five years indefinitely. The only provision for termination was in case the premises were totally destroyed.

The court looked behind the form of the agreement and found that in effect it was a gift to the hospital commission; that it was not meant for the benefit of the defendant or of both parties but for the benefit of the plaintiff entirely. At l.c. 161 the court stated:

"School districts are created by the state for the sole purpose of promoting the education of the youth of the state. All their powers are given them and all the property which they own is held by them in trust for

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the same purpose, and any contract of any nature which they may enter into, which shows on its face that it is not meant for the educational advancement of the youth of the district but for some other purpose, no matter how worthy in its nature, is ultra vires and void.

\* \* \* \* \*

" \* \* \* (cases cited) While these cases differ as to the result reached, so far as the validity of the particular leases in question are concerned, yet we think they all recognize the principle that any disposition of school property must be for the benefit of the district and not a gift to other parties.

"It is doubtless true that the maintenance of a hospital in the city of Prescott is a most praiseworthy objective, and that contributions for that purpose by those individuals or organizations which are legally permitted to make them are most commendable, but school districts are not permitted to give away the property of a district even for the most worthy purpose, and since it appears clearly by the terms of the lease that this is its practical effect, we hold that it is ultra vires and void."

Under the facts of a given case, the board might be justified in considering the use to which the land being sold is to be put and reject a higher bid as not the best bid considering that factor. For example, in *Gatliff v. Inman*, 131 Ky. 233, 115 SW 254, the court held that the board acted in good faith and in the best interest of the district when it sold land adjoining the school building to a representative of a church for a lesser sum than was bid by others. The court said, SW 1.c. 256:

" \* \* \* Again, in the exercise of their discretion, the trustees would have the right to prefer that the property which they were selling should be used for church purposes rather than for something else, if the remainder of the property was to be continued as a site for school purposes. \* \* \* The presence of a church near a schoolhouse and grounds we apprehend could not

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in any state of case be objectionable, but many other buildings might be and many uses to which the ground might be put would be very objectionable, and the trustees of the school would be warranted in refusing to sell the ground to one who would use it for the conduct of a business that would be injurious to the health or morals or best interests of the school children, so that the use to which the ground is to be put is a proper element for the consideration of the trustees in the conduct of the sale. They knew what it was to be used for if bought by the church people, and, knowing the other bidders to be opposed to its sale and entertaining views hostile to theirs, we are not prepared to say that they acted against the best interests of the school in refusing to accept the bid of those whom they did not believe to be acting in good faith, and in making the sale, as they did, to the agent for the trustees of the church."

In addition to the fact that the board intended to conduct school on the land immediately adjacent to the ground being sold at the time the sale was made, the court found evidence that the higher bids were not made in good faith and permitted the sale to stand. However, the court said, l.c. 255:

" \* \* \* As above stated, the trustees are supposed to act for the best interests of the district. They would not be required to approve a sale to a bidder whom they knew was unable to pay for the property, nor would they be required to recognize a bid for the property if they knew that it was not made with the intention of receiving and paying for the property, but only for the purpose of thwarting their plans and preventing the sale from being made. On the other hand, they should not let mere suspicion and doubt cause them to reject a good bid and accept one for a less price merely because they were of opinion that the high bidder was not acting in good faith. The proper course for them to have pursued in the case at bar would have been to accept each high bid in turn, and give the bidder a reasonable time and opportunity to comply with the terms of the sale, and when each had in turn failed, if they did fail, then and only then should they have accepted the bid of \$250. \* \* \*"

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Since none of the modifying factors in the Gatliff case is brought to our attention in the facts presented here, we are of the opinion that the reasoning of the Arizona case is applicable and that, regardless of the meritoriousness of the purpose for which the property would be used, such a gift, which would be the practical effect of a transfer for one dollar and "good will," would be ultra vires and void.

This conclusion is consistent with the prior opinion of this office rendered to Honorable Floyd L. Snyder, Sr., on January 5, 1951, copy enclosed, wherein it was held that a school district did not have the authority to give property of the district to the state of Missouri for armory purposes.

Inasmuch as we are viewing this question before the transfer is made, we do not deem it necessary to determine whether the board of directors would be individually liable if the procedure outlined in your letter were followed. If it should be attempted, the proper procedure would be for the state, at the relation of the prosecuting attorney, to intervene and enjoin the illegal transfer, or if completed, to sue to have it set aside as being ultra vires and void.

In State to Use of Consol. School Dist. No. 42 of Scott County v. Powell, 359 Mo. 321, 221 SW2d 508, 510, 512, the court stated:

"Appellants concede that the state might have intervened to prevent the illegal transfer and use of the Teachers' Fund for other purposes than the purpose provided by statute. There is no contention that the prosecuting attorney would not have been the proper official to act and represent the state in such a case. In this connection see State ex rel. Thrash v. Lamb, 237 Mo. 437, 450, 141 SW 665; State ex rel. Big Bend Quarry Co. v. Wurdeman, 309 Mo. 341, 274 SW 380, 382; State ex rel. Westhues v. Sullivan, 283 Mo. 546, 224 SW 327, 331; State ex rel. Circuit Attorney v. Saline County Court, supra.

\* \* \*

\* \* \* \* \*

" \* \* \* As stated, the right of the state at the relation of the prosecuting attorney to intervene and enjoin such illegal transfers and expenditures is not questioned. The interest and concern of the state in intervening and stopping such an illegal disposition of public funds is not questioned. We think that

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the right of the state by the prosecuting attorney of the county to intervene in such case and to recover, on behalf of the state and the school district, the amounts so illegally diverted and spent rests upon sound public policy and upon express authority granted by statute. \* \* \*

CONCLUSION

It is the opinion of this office that a school district, in selling property no longer needed for district purposes, in the absence of qualifying factors, does not have the authority to reject higher bids in favor of a nominal one and to convey such property to a religious organization, regardless of how praiseworthy its objective may be, for such nominal consideration. Such a transfer would in effect amount to a gift and would be ultra vires and void.

It is the further opinion of this office that an attempted transfer under the facts outlined herein would be subject to injunction by the state at the relation of the prosecuting attorney.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John W. English.

Yours very truly,

JOHN M. DALTON  
Attorney General

JWI:ml  
Enc.