

**OPINION
62-208**

May 1, 1962 (OPINION)

SCHOOL DISTRICT

RE: Sale of School Site - Notice to Original Owner or Assigns

This is in reply to your letter of April 12, 1962, concerning section 15-26-09 of the North Dakota Century Code. You stated the following facts:

In 1920 Byron School District of Cavalier County, a common school district, purchased a school site and erected an eightroom school building of brick construction to be used as a consolidated school. On February 2, 1960, that part of Byron School District containing this school site and the building was annexed to Linden School District.

Linden School District proposes to sell the school site and the building. The purchaser interested in acquiring the site and building is not the owner of the land adjacent to the premises; nor is he an assignee of the original owner of the site."

The school building is of brick construction and is not of a type that can be moved from its present location. The prospective buyers are not interested in purchasing the building to move it or dismantle it. It appears that the building will remain upon the present site for some time."

Based upon the above facts, you ask the following questions:

1. Has the present owner of the school site and the building power to sell the site and building without regard to the requirement expressed in section 15-26-09, that the site be not used for school purposes for three (3) successive years?
2. Has the present owner the power to sell the site and school building without notice to the original owner or his assigns, giving them an opportunity to repurchase the site at the original purchase price as provided by section 15-26-09?"

As you have noted in your letter, section 15-26-09 of the North Dakota Century Code was repealed by the 1961 Legislature. This section originally applied to common school districts and provided, insofar as it pertinent:

. . . . If a school site so taken or otherwise acquired is not used for school purposes for three successive years, and if no schoolhouse or other building is located thereon, the site shall revert to the original owner or his assigns upon payment to the district of the sum originally paid by the district or such lesser sum as the board may fix. If the owner or his

assigns shall neglect or refuse to make the payment within one year after demand therefor by the board, the site may be sold by the board. . . ."

The 1961 Legislature abolished the distinction between common and special school districts and the law formerly applicable to special school districts is now applicable to all school districts insofar as the sale of school sites is concerned. Thus, section 15-29-08(5) of the 1961 Supplement of the North Dakota Century Code provides:

The powers and duties of the school board of a public school district shall be as follows:

5. To purchase, sell and exchange schoolhouses and rooms, lots, or sites for schoolhouses, teacherages and dormitories, and to lease such facilities for a period not to exceed one year. . . ."

As you noted in your letter, the basic question involved in this matter is whether section 15-26-09 of the North Dakota Century Code, in effect at the time that Byron School District obtained title, vested a right in the former owner of the site and his assigns to recover the site in accordance with the provisions of such statute.

Our Supreme Court is considering the effect of section 15-26-09 stated:

Thus a common school district does not acquire an absolute fee simple title to a schoolhouse site. It is subject to reversion to the original owner under the conditions set forth in the statute."

Board of Education of City of Minot v. Park District, 70 N.W.2d. 899, 907 (ND 1955).

Insofar as the question of whether the "reversion" provided for by section 15-26-09 of the North Dakota Century Code created a vested right is concerned, we note the case of Waddell v. Board of Directors to Aurelia Consolidated Independent School District, 175 N.W. 65 (Iowa 1919), in which a statute similar in effect to section 15-26-09 was being considered. The Iowa Court said, at page 67 of the report:

. . . . If any rights arose out of any conveyance at the time thereof to any person other than the district township, such rights could not be impaired by subsequent legislation. As to the rights of the school corporation, these could be impaired and diminished by subsequent legislation. So far as disclosed, no right arose to anybody out of the conveyances except to the school corporation. As to the rights of the school corporation, these could be impaired and diminished by subsequent legislation. So far as disclosed no right arose to anybody out of the conveyances except to the school corporation. As to the parties who might ultimately become entitled to a reversion under the provisions of the statute then existing, no right then vested. The Legislature could thereafter have repealed the provisions for reversion without violating the rights of anyone. It could have again enacted

different provisions pertaining to reversion without violating the rights of any one. In other words, no one then had a vested right in the future operation of the statute. When the rights of these claimants finally vested by nonuser, they took even then by statutory grace and not by any right outside of the statute. . . ." (Emphasis supplied.)

On page 68 of the report of the above cited case, the Iowa Court said:

. . . . While the right to take these school sites is denominated in the statute as a right of reversion, it is not strictly such in a legal sense. It is simply a statutory right of purchase upon certain specified conditions. The statute was not enacted as a matter of right to particular claimants, but as a matter of public policy. The statute being enacted, the rights of these claimants arise under it and not outside of it. It does not purport to determine or impair existing rights of any person. It is simply the exercise of the power of the Legislature over the school corporation and over its property. . . ." (See also 41 ALR 2d. 1386.)

In 16 CJS 1193, CONSTITUTIONAL LAW, Section 226, we note the following statement:

A possibility of reverter is not a vested right, but a mere expectation of property in the future, and so may be defeated by statute."

We believe the right to purchase given the original owner or his assigns of a school site under the provisions of section 15-26-09 is not a vested right but rather a mere expectancy, and as such, may be altered or repealed without violating any constitutional provisions. This, the North Dakota Legislature has done and, in our opinion, a public school district, under existing law, may sell buildings and sites without regard to the rights of the original owner or his assigns as set forth in section 15-26-09 of the North Dakota Century Code, and without regard to the three year period provided for in that section.

We are, of course, assuming that the site was used for school purposes within the three years immediately preceding the repeal of section 15-26-09. If the site was not used for school purposes within three years immediately preceding the repeal of section 15-26-09 of the North Dakota Century Code, it would appear the statutory right to purchase would have lost its mere inchoate or expectancy character and would have ripened into a present vested right which could not have taken away without a violation of constitutional provisions. See 41 ALR 2d. 1387. Thus, we believe that if the site has not been used for school purposes within three years immediately preceding the repeal of section 15-26-09 of the North Dakota Century Code, the right to purchase provided by such statute would have become a vested right which would not have been affected by the repeal of the statute.

We would also note, however, that section 15-26-09 of the North Dakota Century Code contained a provision that no schoolhouse or

other building be located on the school site in order for the original owner or his assigns to have the right to purchase. In the instant case, there was a school building on the school site and it would appear, therefore, that the right to purchase would not have vested even though the site was not used for school purposes within three years immediately preceding the repeal of the statute. Since all the conditions of the statute would not have been met, it would appear no right could have vested at the time of the repeal of the statute.

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