

OPINION
54-32

June 7, 1954 (OPINION)

EDUCATION

RE: School Site on Leased Land

We have received your letter of June 1, 1954, wherein you ask the following questions:

1. Does a school district have the legal right to construct a permanent school building on a school site on the basis of a ninety-nine year lease?

School boards have only such powers as are vested in them by law, either expressly or by necessary implication and can bind the district only within the scope of their authority.

The power of an independent school district board reference to school buildings and sites is found in section 15-3207 of the North Dakota Revised Code of 1943, subsection 2 reads as follows: "To build, enlarge, alter, improve, or repair school houses, outhouses, and appurtenances, as it may deem advisable upon lot and sites owned by the district." The power of a special school district board on the same subject is set forth in section 15-2908 of the 1943 North Dakota Revised Code, subsection 5 and reads as follows: "To build, alter, enlarge, improve, and repair such schoolhouses, outhouses, and appurtenances, as it may deem advisable upon lots and sites owned by the district." The powers of a common school district are conferred in more general terms, but nowhere is there any indication that a common school district board has the power to lease ground upon which to build a schoolhouse.

It is our opinion that a Legislature has not conferred upon school districts the power to lease land upon which to erect permanent school buildings either expressly or by implication, and we, therefore, hold that no school district in this state has such power.

2. If the land in question is state owned, but under the control of the State Board of Higher Education, can the state board lease this to a school district for school site purposes, or can the state board sell the land to the school district, and transfer permanent title?

We do not believe the State Board of Higher Education has the authority or power to sell or lease land. They have only control and management powers over the institutions of higher learning in the state. However, the Board of University and School Lands has full control over lands donated or granted by or received from the United States or from any other source for the support or maintenance of the common schools of the state, as well as the institutions of higher learning in the state and have the power to sell and dispose of the same. See chapter 15-09 of the North Dakota Revised Code of 1943 for acquiring public land for public purposes such as school sites. We

believe the procedure set forth therein is the proper one to follow to acquire public land for school purposes.

3. If the State Board of Higher Education can lease or sell, or either, would an agreement stipulating that the college could use the school for teacher training purposes be legal, and would it be adequate consideration?

If after a school district has acquired land in a legal manner, and has erected a schoolhouse thereon, and a teacher training program conducted in the school would not interfere with the conduct of the school, we can see no legal objection to a program as described above.

4. Can a school district for a consideration agree to permit one of its schools to be used for teacher training purposes by the college?
 - a. In perpetuity?
 - b. For a limited period of time?
 - c. For an indeterminate period of time subject to cancellation with adequate notice?

It is our opinion that a school district can legally permit the use of one of their schools for a teacher training program, and can enter into a lease agreement for such use with a college, provided that such use does not interfere with the proper operation of the educational program of the district. The lease agreement would have to be for a limited time and subject to cancellation on short notice should the necessity arise for use of the building to carry on the educational program of the district.

5. Would a board of education of a school district retain legal control over the buildings, facilities, and instruction under the above?

A school district board has control and the responsibility of looking after and managing all property of the district it represents, and while it may delegate to others the actual work, they cannot delegate the control and management of property belonging to the district. The instruction program, if it is sponsored by the college, and all the expense thereof paid by the college, would not be subject to control by the school district board, but would be entirely under the jurisdiction and control of the college authorities.

We trust that this answers your questions.

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