OPINION
57-168

May 1, 1957 (OPINION)

SCHOOL DISTRICTS

RE: Condemnation - Addition to School Site

We have received your request for an opinion in regard to the amount of ground a common school district may acquire by condemnation for a school plant.

You state that a certain common school district in your county which operates both an elementary and high school wishes to add about ten acres to its present three acres used for a site for buildings and school grounds, but you question whether this can be done because of section 15-2609 of the Code.

The present owners of the land sought by the school district refuse to sell and you ask whether we believe the district can proceed to condemn the ten acre tract under Chapter 32-15 of the 1943 Revised Code.

Section 15-2609 provides, among other things, that a common school district may acquire not less than one nor more than five acres as a site for a schoolhouse.

Section 32-1502(3) in setting forth the purposes for which eminent domain may be used provides in part, "public buildings and grounds for the use of any county, city, park district, village or school district;"

The question then arises whether the word "site" as used in section 15-2609 means only the immediate ground upon which a school building stands or whether it means the total amount of ground that a common school district may acquire for school purposes. If it means only the piece of land upon which the school building stands, then under section 32-1502(3) a common school district could acquire additional land for other school purposes such as athletic fields, etc. However, if the word "site" as used in section 15-2609 means the entire ground for all school purposes which may be acquired by a common school district, then the district here involved could only acquire an additional two acres of land.

We could not find any North Dakota case in point on this matter, but in the case of Board of Education of Oklahoma City v. Woodworth, an Oklahoma case found in 214 P. 1077 the court in defining "school site" had this to say. "The term 'school site' in its common acceptation, and as commonly understood refers to a parcel of ground sufficient in size upon which to erect a school, and a yard surrounding the same to be used as a playground for the children while at school."

It is impossible for us to say how a court would construe these sections of the law, but in the light of present day conditions it seems unreasonable to restrict a common school district to five acres

for school purposes, especially when no such restriction is placed on special and independent school districts. However, since the language of section 15-2609 is clear and unequivocal, it is entirely possible and perhaps probable a court would hold the limitation binding on common school districts.

We are sorry we cannot give you a clear-cut answer but under the circumstances it is impossible for us to do so. Perhaps it would be advisable for the district concerned to test the matter in our courts.

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Attorney General