

FILE

Subject

Schools - Property
Power to acquire
and dispose

Copy to



STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

August 15, 1974

Opinion No. 74- 276

Harold L. Voth
Superintendent of Schools
U.S.D. 312
Haven, Kansas 67543

Dear Superintendent Voth:

You advise that a group of citizens from the Partridge Community Church, Partridge, Kansas, has asked that the Board of Education grant them authority to use certain school property, comprising an area slightly smaller than a city block adjacent to the building which was Partridge High School before Partridge was transferred to the Haven Unified School District.

The board thus is concerned with their legal authority either to sell the property to this group for a token fee, or to lease the property to them for an indefinite period of time.

K.S.A. 72-8212 provides in pertinent part thus:

"School buildings and other school properties not needed by the district may be sold by the board, at a private or public sale, upon the affirmative recorded vote of at least a majority of the members of the board, at a regular meeting."

This authority to sell property has traditionally been interpreted by this office to authorize transfer of property for valuable consideration. In an opinion dated September 26, 1957, Attorney General John Anderson, Jr., stated that a "school district might sell its building to the common school district for a \$1.00 consideration if this is in fact the consideration agreed upon." Thus, a nominal sum may constitute a valuable consideration for which the board may agree to transfer the property in question, if it so chooses.

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The further question is raised whether the board may lease the property to the group for use for recreational purposes. In an opinion dated June 6, 1960, addressed to Thomas Van Cleave, Attorney General John Anderson, Jr., stated thus:

"We do not find specific authority for a Board of Education to lease property owned by the school district to third parties. It is well established that school districts have only such powers as are conferred upon them by statute, specifically or by clear implication, and any reasonable doubt as to the existence of such power should be resolved against its existence. . . ."

"It would appear that the use of a school gymnasium by the Y.M.C.A. could reasonably be considered to be a use for community purposes, but we do not believe the use of real estate owned by the school district for a car sales lot could be so classified. In our opinion, in neither instance would the Board of Education be authorized to execute a written lease to third parties for the use of school property."

Since that time, there has been enacted what is now K.S.A. 72-8212, which states in pertinent part:

"The board may open any or all school buildings for community purposes, and may adopt rules and regulations governing such use of school buildings."

Although this section permits the board to make school buildings available for community purposes, it does not authorize leasing of school grounds, such as the property you describe, to a third party for its use.

I regret the delay in responding to your letter. However, I hope the foregoing will be helpful to you nonetheless.

Yours very truly,



VERN MILLER
Attorney General

VM:JRM:jsm