

STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider
Attorney General

March 15, 1976

ATTORNEY GENERAL OPINION NO. 76- 91

Dennis G. Hall
HARDESTY, HALL & SCHLOSSER
Attorneys at Law
2201 West 29th Street
Topeka, Kansas 66611

Re: Schools--Boards of Education; Organization,
Powers and Finances--Sale of Unneeded School Property

Synopsis: U.S.D. #321 may sell any unneeded school buildings or other school properties, at public or private sale for whatever consideration the board, in its judgment, determines is in the best interest of the school district to accept. The district may not donate unneeded school properties to the City of St. Marys. Finally, the school district is permitted to sell only those properties which are determined by the board to be unneeded by the district. Thus, the school district is prohibited from conveying school properties under conditions which reserve an active or current interest by the district in the property for limited school purposes.

* * *

Dear Mr. Hall:

As general counsel for Kaw Valley Unified School District #321, you have requested my opinion on the following three questions:

1. Does the school Board of Kaw Valley Unified School District #321 have the right to sell the Hill School property for any amount to any entity or individual as it may determine by appropriate Board action?

Dennis G. Hall
Page Two
March 15, 1976

2. Does the School Board of Unified School District #321 have the right to donate the Hill School property to the City of St. Marys?

3. Does the Kaw Valley Unified School District #321 have the authority to reserve rights and restrict the use of the Hill School in the event it is transferred to the City of St. Marys, i.e., reserve the right to utilize the premises for limited school purposes, reserve the right to have the property transferred back to the School District in the event the City of St. Marys, Kansas, fails to properly maintain the premises or allows the premises to be utilized for purposes other than the benefit of the community or prohibit the disposition of the property by the City of St. Marys to an entity or individual other than the Unified School District #321?

The authority to sell unneeded school district property is contained in K.S.A. 72-8212 which provides in pertinent part:

"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. If there is located on any school property sold at private sale a building the construction of which was completed less than twenty (20) years before the sale of such sale, said property shall be sold for not less than three-fourth (3/4) of the appraised value thereof as fixed by three (3) disinterested electors of the unified district appointed to appraise said property by the county clerk of the home county of the unified district. Conveyances shall be executed by the president of the board and attested by the clerk."

My research has revealed that the only statutory limitations imposed on this authority to sell real property are contained within this statute. Thus, all questions pertaining to the

Dennis G. Hall
Page Three
March 15, 1976

consummation of the sale, including, but not limited to competitive bidding and the amount of consideration for the sale, are questions, which, in my view, are vested in the discretion of the board of education. In other words, the authorization to sell property implicitly confers the additional authority to determine and establish by appropriate board action the conditions under which the sale will be conducted. More specifically directed towards the thrust of your inquiry, the decision whether the property should be sold after a competitive bidding or for nominal consideration is within the discretion of the board. For your further edification upon this and collateral points, please find enclosed copies of Attorney General's Opinions No. 74-276 and 75-387.

It is a fundamental principal of law that municipal corporations, including 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. The authority to donate district owned realty is not statutorily granted to the district or the board of education. Further, there appears no statute which impliedly condones the donation of district property. Accordingly, U.S.D. #321 may not donate unneeded district realty to the City of St. Marys, Kansas.

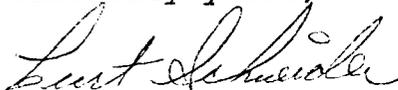
Finally, you have inquired as to what conditions or restrictions the school district may impose upon the transfer of the fee. Referring to the language of the statute itself, the only mandatory restriction upon the power to sell is that the property be "unneeded." Examining the conditions your correspondence suggests might wished to be imposed upon any potential sale, it appears contradictory for the school district to convey realty as "unneeded" and then reserve an interest for limited school activities. In my opinion, the attachment of conditions precedent or subsequent to the conveyance of fee simple is discretionary with the board of education. The only limitation imposed on this discretionary authority is that the restriction, reservation or condition contained in the deed or transfer agreements does not in any manner allow the property to continue to be used for school district purposes. The retention of a reversionary interest for breach of a condition attached to sale is permissible. The only criteria to utilize is that the realty and

Dennis G. Hall
Page Four
March 15, 1976

improvements thereon which are to be sold pursuant to K.S.A. 72-8212 must not be needed in any respect by the school district prior to the sale.

Accordingly, it is my opinion that U.S.D. #321 may sell any unneeded school buildings or other school properties, at public or private sale for whatever consideration the board, in its judgment, determines is in the best interest of the school district to accept. The district may not donate unneeded school properties to the City of St. Marys. Finally, the school district is permitted to sell only those properties which are determined by the board to be unneeded by the district. Thus, the school district is prohibited from conveying school properties under conditions which reserve an active or current interest by the district in the property for limited school purposes.

Sincerely yours,



CURT T. SCHNEIDER
Attorney General

CTS:HTW:bv