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May 14, 1979

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ATTORNEY GENERAL OPINION NO. 79- 82

Mr. Dennis G. Hall
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Attorneys at Law
2201 West 29th Street
Topeka, Kansas 66611

Re: Schools--Board of Education--Construction of
Parking Facilities

Synopsis: A board of education has no authority to expend school funds for the purpose of constructing, maintaining or repairing diagonal parking facilities along a city street. A board of education may, however, expend school funds to construct, maintain and repair entrances to provide ingress and egress to and from such city streets to a school parking lot.

* * *

Dear Mr. Hall:

As General Counsel for Unified School District No. 321, you request our opinion regarding the following questions:

"1. Can . . . Unified School District #321 expend its funds to make capital improvements, in the form of a parking facility, on city owned property in the City of Emmett, Kansas?"

"2. Can . . . Unified School District #321 take responsibility for the cost of maintenance and repair to said parking facility?"

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"3. Can . . . Unified School District #321 expend its funds to construct an entrance from the street to the school parking lot, a portion of which will be on city property of the City of Emmett, Kansas?"

You indicate that Unified School District No. 321 owns a tract of land located in the City of Emmett, Kansas, and is in the process, pursuant to financing made available by a school bond election held in 1978, of constructing an educational facility thereon.

As part of this project, the Board of Education is desirous of providing diagonal parking along the street adjacent to said property. In addition, the Board of Education desires to build entrances to provide ingress and egress to and from such streets to additional school parking facilities. The entrances, however, will be located on a portion of the land dedicated to, or otherwise acquired by the City of Emmett, Kansas, for use as public streets.

K.S.A. 72-8212, in relevant part, provides: "The board shall have title to . . . all school buildings and other property belonging to the district." [Emphasis added.] By virtue of this clear and unambiguous legislative pronouncement, we are of the opinion that such a board, subject only to statutory limitations, has complete control over and full legal ownership of all property belonging to the district, including all legal rights, titles and interests accruing by, or incidental to such ownership. However, we think it is equally clear that such a board has no authority to exert control over or exercise rights of ownership in any property other than property belonging to the district or in which the district has a legal property interest. We, therefore, are of the opinion that a board lacks authority to expend any of the district's funds for improvements to any property other than property belonging to said district or in which the district has a property interest.

K.S.A. 1978 Supp. 72-8804, which prescribes the purposes for which capital outlay funds of a unified school district may be expended, and K.S.A. 72-6761, which allows a board of education to submit to the electors of the district the question of issuing general obligation bonds, each emphasize the above conclusion. K.S.A. 1978 Supp. 72-8804, in relevant part, provides:

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"Any moneys in the capital outlay fund of any school district . . . may be used for the purpose of construction, reconstruction, repair, remodeling, additions to, furnishing and equipping of school buildings . . . the acquisition of buildings for school purposes and school building sites"

K.S.A. 72-6761, in relevant part, states:

"When a board determines that it is necessary to purchase or improve a school site or sites, or to acquire, construct, equip, furnish, repair, remodel or make additions to any building or buildings used for school purposes . . . such board may submit to the electors of the unified district the question of issuing general obligation bonds for one or more of the above purposes, and upon the affirmative vote of the majority of those voting thereon, the board shall be authorized to issue such bonds."

No purpose listed in either of these statutes grants a board of education the authority to expend capital outlay funds or issue bonds for projects which do not directly and intricately relate to property in which the district has a property interest.

Turning then to your specific inquiries, we are of the opinion that there exist two reasons which prevent the Board of Unified School District No. 321 from expending district funds to provide diagonal parking along the street in Emmett, Kansas, to wit:

(1) The unified school district has no property interest in the city streets. Title to the land dedicated to, or otherwise acquired by the City of Emmett, Kansas, for use as a public street is vested in the county, in trust, for the public use [Miller-Carey Drilling Co. v. Shaffer, 144 Kan. 508, 514 (1936) and cases cited therein]. Therefore, such land is not "property belonging to the district" pursuant to K.S.A. 72-8212. Consequently, no authority exists for the board to exert control over such property.

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(2) No funds are available with which to pay for such improvements. As such land does not constitute property belonging to the district, or in which it has some other property interest, no capital outlay funds, including funds procured from the sale of bonds, may be expended to make improvements on such land. Such improvements are not authorized under K.S.A. 72-6761 or K.S.A. 1978 Supp. 72-8804.

Therefore, it is our opinion that the Board of Education of Unified School District No. 321 may not expend any district funds to make capital improvements, in the form of diagonal parking facilities, along streets in the City of Emmett, Kansas.

The above conclusion, of course, renders your second inquiry moot, and we do not, nor need not, express an opinion thereon.

There remains, therefore, only your third inquiry concerning the expenditure of district funds to construct an entrance from the street to a school parking lot; recognizing, of course, that a portion of such entrance will, necessarily, be located upon the street right-of-way.

In discussing this inquiry it should be recalled that by virtue of K.S.A. 72-8212, above quoted, the Board is the legal titleholder of all school property belonging to the district. As such, and as the district property in question evidently abuts an existing street, said board possesses a common law right of access to said street. As is said in Smith v. State Highway Commission, 185 Kan. 445 (1959):

"The right of access to and from an existing public street or highway is one of the incidents of ownership of the land abutting thereon, and is sometimes called a common law right of access. It is a property right which may not be taken from the owner by the public without his consent, except upon payment of full compensation and by due process of law." (Syl. para. 1.)
(Emphasis added.)

Moreover, in the recent case of Teachers Insurance & Annuity Ass'n of America v. City of Wichita, 221 Kan. 327 (1977), the Court, in discussing this "common law right of access," defines "access" thusly:

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"Access may be defined as the right vested in the owner of land which adjoins a road or other highway to go and return from his own land to the road or highway without unreasonable interferences." (Syl. para. 6.)

From these judicial statements, it is apparent that the Board has a vested property right of access to and from an existing public street. It is a right arising by virtue of and as an incident to ownership of land abutting an existing street. It is, therefore, "property belonging to the district" pursuant to K.S.A. 72-8212, title to which is vested in the Board.

Moreover, if it is assumed, and we feel it is a reasonable assumption to make in light of our modern society, that school parking facilities, located on property owned by a school district, are an intricate and necessary part of the school site or a necessary addition to the school building, it is clear that capital outlay funds may be used to complete such parking lots, including the entrances necessary to provide ways of ingress thereto and egress therefrom.

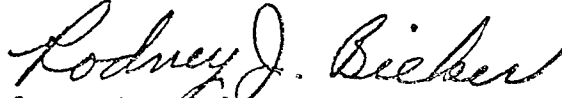
Therefore, it is our opinion that the Board of Education of Unified School District No. 321 may expend district funds to construct an entrance or entrances from a street to a school parking lot, based upon said board's common law right of access.

Very truly yours,



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RTS:BJs:RJB:gk