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June 29, 1981

ATTORNEY GENERAL OPINION NO. 81- 142

Mr. Ward P. Ferguson
P. O. Box 429
McPherson, Kansas 67460

Re: Townships and Township Officers -- Acquisition of
Real Property -- Required Approval of Township's
Electors

Synopsis: The purported conveyance of the Conway School
Building by Unified School District No. 418 to
Jackson Township in McPherson County is invalid.
If the consideration recited for the conveyance
was sufficient to constitute the conveyance as a
purchase of such school building by the township,
the transaction is invalid because it did not re-
ceive the approval of the township's electors, as
required by K.S.A. 1980 Supp. 80-104. If the con-
veyance was a gift, the transaction was invalid
ab initio, because a school board has no authority
to make a gift of school district property. Cited
herein: K.S.A. 72-8212, K.S.A. 1980 Supp. 80-104.

* * *

Dear Mr. Ferguson:

As attorney for Jackson Township in McPherson County, you
have inquired whether the township board has the authority to
accept and use, for township and other specified purposes, the
Conway School Building which has been "abandoned" by Unified
School District No. 418.

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One of the statutes pertinent to your inquiry is K.S.A. 1980 Supp. 80-104, which states as follows:

"The township trustee, clerk and treasurer of the several organized townships in the state of Kansas, in addition to the powers that are now conferred upon them by law, shall have power to procure not to exceed three acres of land for the township, and to build thereon permanent buildings, or to purchase school building or grounds or both the building and grounds the same to be used for public purposes, such as meetings relating to township business, political gatherings, township fairs, entertainments, whether for free use or for hire and profit, at which an admission price may be charged, and such other meetings as may be authorized by the township board. Such township officers may join with any corporation, association, society, or lodge in the construction or purchase of such building, upon such terms and conditions as may be agreed upon by such township and corporation, association, society or lodge, and in case such building is so constructed or purchased it shall be for the joint use of the township and the corporation, association, society or lodge joining in the construction or purchase thereof upon such terms and conditions as are mutually agreed upon. In no event shall said township officers proceed to procure said land or erect said buildings thereon or purchase such schoolhouse or appropriate any of the moneys of said township or levy any tax therefor without first submitting the question to a vote of the electors of said township, and said election shall be governed by and the returns thereof made in accordance with the laws governing the election of township officers. Funds authorized by such election may be used in the joint construction or purchase of a building as herein provided. The township trustee, clerk, and treasurer may procure, either by purchase or by lease, not to exceed two acres of land for the township and

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build thereon sheds and buildings that may be necessary for the storage and protection of tools, implements and machinery without such election, which said costs may be paid out of the general fund of the township or from the general road fund of the township, or from either or both of the said funds.

"Whenever any township is authorized by virtue of an election to construct or purchase township buildings, general obligation bonds may be issued for such purpose in accordance with the provisions of the general bond law."
(Emphasis added.)

The emphasized portions of the foregoing statutory provisions indicate that the township trustee, clerk and treasurer (i.e., the township board) are authorized to either (1) "procure" land for the township and to build thereon permanent buildings, or (2) "purchase" school buildings or grounds or both for public purposes; and in either event the procurement of the land or the purchase of the school building must be approved by a vote of the township electors.

You advise that the school building in question has been deeded to Jackson Township for the sum of one dollar, and you also indicate that the following proposition was submitted to and rejected by the electors of the township:

"Shall Jackson Township appropriate the Conway School Building and Property for usage as a Jackson Township Hall; and levy an annual tax up to the maximum amount authorized by law for the purpose of Grounds and Building Maintenance."

Based on these facts, we must conclude that Jackson Township has no authority to accept and use the "abandoned" school building.

First, assuming that the transaction was a purchase of the school building and grounds by the township (although we note that you question whether one dollar was sufficient consideration to constitute a valid purchase), such purchase was not

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approved by the township electors, as required by K.S.A. 1980 Supp. 80-104. Your suggestion that the purpose of submitting the above-quoted proposition to the township's electors was to "approve a mill levy for the upkeep of the building" does not alter the fact that K.S.A. 1980 Supp. 80-104 requires such electors to approve the purchase of the school building. This has not been accomplished.

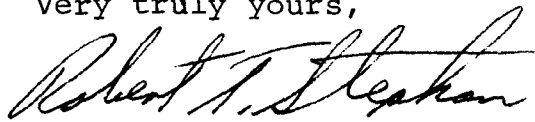
Moreover, assuming arguendo that the transaction amounted to a gift of the school building, our conclusion remains unaltered. In Attorney General Opinion No. 76-131, even though Attorney General Schneider construed the authorization in 80-104 to "procure" lands as being broad enough to permit a township board to accept a gift of property for use as a community building, that opinion also recited the necessity of an election to approve the township board's acceptance of such gift. We concur in that prior opinion. However, under the facts you have presented, even if the conveyance of the school building to Jackson Township were construed as being a gift, and there had been an election at which the township's electors approved the "procurement" of such property, the conveyance would still be invalid.

Such conclusion is predicated on the fact that the Board of U.S.D. No. 418 has no authority to make a gift of the school district's property, particularly a school building. K.S.A. 72-8212 provides, in 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." (Emphasis added.) K.S.A. 72-8212 clearly requires the disposition of a school building by private or public sale, and we are aware of no other statutory provision which would authorize the disposition of a school building by gift. It is well-established law in Kansas that school boards possess only those powers specifically granted to them by statute or necessarily implied therefrom. Wichita Public Schools Employees Union v. Smith, 194 Kan. 2, 4 (1964), and State, ex rel., v. Rural High School District No. 7, 171 Kan. 437 (1951) and the cases cited therein at 441. Thus, if the purported conveyance of the school building was intended to be a gift, it was void ab initio, because the school board has no authority to dispose of school property by gift.

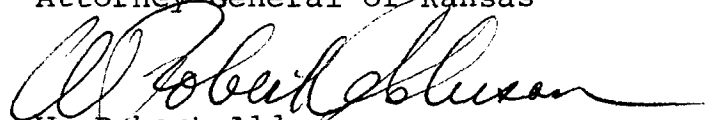
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Therefore, it is our opinion that the purported conveyance of the Conway School Building by U.S.D. No. 418 to Jackson Township is invalid. If the consideration recited for the conveyance was sufficient to constitute the conveyance as a purchase of such school building by the township, the transaction is invalid because it did not receive the approval of the township's electors, as required by K.S.A. 1980 Supp. 80-104. If the conveyance was a gift, the transaction was void ab initio, because the school board has no authority to make a gift of school district property.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



W. Robert Alderson
First Deputy Attorney General

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