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January 7, 1980

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ATTORNEY GENERAL OPINION NO. 80-12

Mr. Steven E. Worcester
Graham County Attorney
413 North Pomeroy Avenue
Hill City, Kansas 67642

Re: Schools--Transfer of School District
Territory--Retention of Mineral Interest
by Original District

Synopsis: In the absence of any statutory authority, the transfer of territory from one school district to another pursuant to K.S.A. 72-7101 et seq. may not involve merely the transfer of a surface interest, with the mineral interest retained by the transferring district, but must instead transfer all property included in the territory.

* * *

Dear Mr. Worcester:

As County Attorney of Graham County, you have submitted the following question to this office for our opinion:

"Can the surface interest of a tract of real estate be transferred from one school district to another with the mineral interest of that real estate remaining in the district from which the surface interest is proposed to be transferred?"

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You inform us that the particular situation here involves a Graham County family whose property, while currently in U.S.D. No. 281 (Hill City), lives next to the boundary line between that district and U.S.D. No. 208 (Wakeeney). Wakeeney is in fact closer to the property than is Hill City, and the family desires to have their child attend school in the former town, which is also where they do their day-to-day business. However, as they live in U.S.D. No. 281, they are not eligible for school bus transportation from U.S.D. No. 208. A solution to this problem would be to transfer the property from the one district into the other, a step which is possible under K.S.A. 72-7101 et seq.

This solution, while resolving the problem of the family regarding transportation, would create another, with this latter being the subject of your inquiry. Specifically, you state that the property involved contains valuable mineral interests, the tax benefits of which U.S.D. No. 281 does not wish to lose. Therefore, the proposal has been made that only the surface interest of the real estate be transferred to U.S.D. No. 208, with the mineral interest retained by U.S.D. No. 281. You wish to know if such a transfer is allowed by statute.

In our opinion, the answer to your inquiry must be in the negative. While K.S.A. 72-7101 et seq. set out the procedure by which territory in one school district may be transferred to another, we have been unable to find any statutory authority for the making of a bifurcated transfer of the kind you describe. It is the rule in Kansas that no generalized residue of implied power exists in the absence of such authority. This general rule was reiterated in State ex rel. McAnarney v. Rural High School Dist. No. 7, 171 Kan. 477 (1951) thus:

"In this state it has long been the rule that school districts . . . have only such powers as are conferred upon them by statute, specifically or by clear implication, and that any reasonable doubt as to the existence of such power should be resolved against its existence." 171 Kan. at 411. (citations omitted.)

See also Wichita Public Schools Employees Union v. Smith, 194 Kan. 2 (1964). Accordingly, the district has no authority, express or implied, to make a transfer of territory to another district and yet retain the mineral interests.

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Indeed, it would appear from an examination of K.S.A. 72-7101 et seq. that such a transfer is not allowed by the specific intent of the statutes. We note particularly that K.S.A. 72-7103, which deals with the effective date of the transfer for various purposes, states at (a):

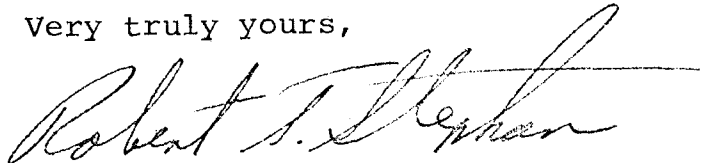
"The territory transferred and the taxable tangible property therein shall be subject to taxes levied, except for bonds and other indebtedness incurred theretofore, by the receiving district . . ." (Emphasis added.)

From this it would appear that a transfer of only some of the taxable property contained in the territory would not be proper, as it is envisaged that the "receiving district" shall obtain the right to include the tangible property contained in the territory in its tax base. Where, as here, extensive mineral rights are involved, the amount at stake could be considerable, and as the intent of the statute would appear to entitle the receiving district to all tangible property, this would include the mineral rights.

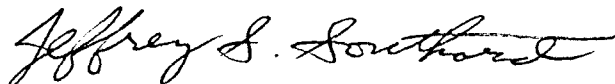
However, this conclusion may or may not be dispositive of the original problem here. We note that K.S.A. 72-6757 allows districts to contract with each other for the payment of tuition for students attending school in a district not of their residence. Additionally, K.S.A. 72-8307 allows a district to contract with another district for the transporting of the latter's students. While you may have already considered these options and found them to be unworkable, they may provide an alternative for the family involved.

In conclusion, in the absence of any statutory authority, the transfer of territory from one school district to another pursuant to K.S.A. 72-7101 et seq. may not involve merely the transfer of a surface interest, with the mineral interest retained by the transferring district, but must instead transfer all property included in the territory.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Jeffrey S. Southard
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