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December 11, 2023

ATTORNEY GENERAL OPINION NO. 2023-12

Mr. John S. Robb
Somers, Robb and Robb
110 E. Broadway
Newton, Kansas 67114-2222

Re: Schools—Provisions Relating to the Use of School District Property—Disposition of closed school buildings; notice to legislature; adoption of concurrent resolution for state agency to acquire the school building; requirements

Synopsis: “Dispose of” (and like phrases) in 2023 House Sub. for S.B. 113, sections 4 and 11 (to be codified at K.S.A. 2023 Supp. 72-1439 and K.S.A. 2023 Supp. 72-3216(d)) means to deal with conclusively, give away or sell, or to get rid of a school district building. It does not include leasing or renting a building.

Dear Mr. Robb:

As counsel for Newton Unified School District No. 373, you ask, on behalf of the board of education, our opinion concerning the interpretation of sections 4 and 11 of 2023 House Substitute for S.B. 113, as it might impact the sale or lease of a school building. In your letter, you propound six questions:

1. “Does a school district need to go through the procedures outlined in H sub SB 113 Sections 4 and 11 if the district intends to lease out a building rather than sell a building?”
2. “Does the phrase ‘dispose of a school district building’ in H Sub SB 113, Section 4 include leasing or renting out a building?”

3. “If leasing is included in ‘disposing of a school district building,’ are renewals or extensions of a pre-existing lease also included?”
4. “If leasing is not included in ‘disposing of a school building,’ but the lease contained an option to purchase, does that bring the lease into the statutorily required procedure?”
5. “Does the phrase ‘dispose of a school district building’ in H Sub SB 113, Section 4 include gifting a building?”
6. “In the event a school district intends to dispose of a building by selling it, and the procedures set forth in H Sub for SB 113, Sections 4 and 11 are thus implicated, does the statutory procedure contemplate that the state acquire the building for free or does the statute contemplate a ‘right of first refusal’ process where the state agency would acquire the building by paying the amount that another buyer is ready, willing, and able to pay for the building or yet some other amount?”

Answering your questions requires us to engage in statutory interpretation. The rules guiding statutory interpretation are well established.

First, we must try to ascertain legislative intent through the statutory language enacted, giving common words their ordinary meanings. When a statute is plain and unambiguous, we should not speculate about the legislative intent behind that clear language, and should refrain from reading something into the statute that is not readily found in its words.¹ Only if the statute’s language or text is unclear or ambiguous do we resort to legislative history to construe the legislature’s intent.²

When construing statutes to determine legislative intent, we must consider various provisions of an act *in pari materia* with a view of reconciling and bringing the provisions into workable harmony.³ Moreover, we are to avoid unreasonable or absurd results and “presume the legislature does not intend to enact useless or meaningless legislation.”⁴

¹ *Montgomery v. Saleh*, 311 Kan. 649, 654, 466 P. 3d 902 (2020).

² *In re M.M.*, 312 Kan. 872, 874, 482 P.3d 583 (2021). We recognize (and mostly agree with) the well-known criticisms of using legislative history in statutory interpretation. *See generally Conroy v. Aniskoff*, 507 U.S. 511, 518–19 (1993) (Scalia, J., concurring). Nonetheless, Kansas courts continue to at least theoretically accept the use of legislative history under certain circumstances.

³ *Miller v. Bd. of Cty. Comm’rs*, 305 Kan. 1056, 1066, 390 P.3d 504 (2017).

⁴ *In re Marriage of Traster*, 301 Kan. 88, 98, 339 P.3d 778 (2014).

As you stated in your letter, 2023 House Substitute for S.B. 113 was passed by the legislature on April 28, 2023. Significantly, the relevant portions of the bill, specifically sections 4 and 11, were added in the conference committee without the benefit of committee hearings that might have shed light on legislative intent. These provisions are to be codified at K.S.A. 2023 Supp. 72-1439 and K.S.A. 2023 Supp. 72-3216(d).

In summary, this new legislation requires that within 30 days after the board of a local school district votes to dispose of a school district building, the school district must provide notice to the Clerk of the Kansas House of Representatives and the Secretary of the Kansas Senate. The notice must include a description of the school building's use, the reason for the building's disuse and disposal, the legal description of the real property to be disposed of, and a copy of the resolution adopted by the school board.⁵

If the notice is received during the legislative session, then the legislature has 45 days to adopt a concurrent resolution stating the intent of the state to acquire the school district building. If the notice is received when the legislature is not in session, then the legislature shall have 45 days from the commencement of the next regular session to adopt a concurrent resolution stating the intent of the state to acquire the building. If the legislature does not adopt a concurrent resolution within the 45-day period, then the school district may then proceed to dispose of the building.⁶

Once the concurrent resolution is adopted, the state agency named in the resolution shall have 180 days to complete its acquisition of the school district building. Upon request of the acquiring state agency, the legislative coordinating council may extend the 180-day period for not more than 60 days. Importantly, the "school district shall not sell, gift, lease, or otherwise convey such building or any of the real property described in the written notice" or take any action that would diminish the value of the property during the 180-day period or any extension thereof. If the state agency does not take title to the property within this time period, the school district may dispose of the school district building in accordance with state law and any written agreements entered into between such state agency and the school district.⁷

With this background, we now turn to your questions:

⁵ K.S.A. 2023 Supp. 72-1439(a).

⁶ K.S.A. 2023 Supp. 72-1439(b).

⁷ K.S.A. 2023 Supp. 72-1439(d).

1. Does a school district need to go through the procedures outlined in K.S.A. 2023 Supp. 72-1439 and K.S.A. 2023 Supp. 72-3216(d) if the district intends to lease out a building rather than sell a building?

Unfortunately, many of the operative terms of this legislation are undefined. In particular, nowhere does the statute define “dispose of.” Webster’s Dictionary describes “dispose of” as “to deal with conclusively; settle” or “to give away or sell” or “to get rid of; throw away.”⁸ Thus, in our view, the term “dispose of” means a permanent divesting of all interests in the school district building.

A lease is commonly known as “[a] contract by which a rightful possessor of real property conveys the right to use and occupy the property in exchange for consideration. . . . The lease term can be for life, for a fixed period, or for a period terminable at will”⁹ but, ultimately, a lease ends and the lessor retains some right in the property. In other words, a lease conveys a possessory interest that is less than the entire interest in the property, and for a period of time that is less than permanent. A lease, therefore, would not constitute a disposal of the property. Accordingly, the procedures outlined in K.S.A. 2023 Supp. 72-1439 need not be utilized when a school district merely leases out a school district building.

2. Does the phrase “dispose of a school district building” in K.S.A. 2023 Supp. 72-1439 include leasing or renting out a building?

Given our answer to question one, the phrase “dispose of a school district building” would not include leasing or renting such a building, unless (as will be more fully discussed below) the leasing or rental agreement included an option to buy the property or some other rent-to-own arrangement.

3. If leasing is included in “disposing of a school district building,” are renewals or extensions of a pre-existing lease also included?

Given that the leasing of a school district building is not a disposal of the building, any extensions or renewals of such a lease would also not be implicated by H. Sub. for S.B. 113.

4. If leasing is not included in “disposing of a school building,” but the lease contained an option to purchase, does that bring the lease into the statutorily required procedure?

Given that a change in ownership is achieved at the end of a lease–purchase agreement, our view is that such a lease–purchase agreement that provided for an

⁸ *Dispose Of*, Webster’s New World College Dictionary (5th ed. 2020).

⁹ *Lease*, Black’s Law Dictionary (11th ed. 2019)

option to purchase a school district building would implicate the provisions of H. Sub. for S.B. 113 at the time the purchase option was exercised, provided this option was exercised after the effective date of the statute and provided the statute as currently written was still in effect. If the lease–purchase agreement contained a mandatory purchase provision, then it would be subject to the provisions of H. Sub. for S.B. 113 at the time the lease–purchase agreement was signed.

5. Does the phrase “dispose of a school district building” in K.S.A. 2023 Supp. 72-1439 include gifting a building?”

Since gifting, like selling, results in the conclusive transfer of title to another entity, gifting a school district building to another person or entity would only be allowed after following the provisions of H. Sub. for S.B. 113.

6. In the event a school district intends to dispose of a building by selling it, and the procedures set forth in K.S.A. 2023 Supp. 72-1439 and K.S.A. 2023 Supp. 72-3216(d) are thus implicated, does the statutory procedure contemplate that the state acquire the building for free or does the statute contemplate a “right of first refusal” process where the state agency would acquire the building by paying the amount that another buyer is ready, willing, and able to pay for the building or yet some other amount?”

Unfortunately, this issue is unaddressed in the legislation. We note that the Kansas Legislative Research Department’s summary of H. Sub. for S.B. 113 describes the provisions allowing the state to acquire a school district building as a “right of first refusal.” We agree with this interpretation, as it would prevent a school district from suffering an unanticipated loss from the state’s acquisition of the building.

The lack of specificity in the statute leaves open the possibility that the legislature could merely set its own purchase price (or even take the building for free) at the time it passes its resolution. School districts are ultimately creatures of the State itself, not independent entities; and the legislature can deal with them as it wishes.¹⁰

¹⁰ *Tecumseh Sch. Dist. No. 7 v. Throckmorton*, 195 Kan. 144, 145–46, 403 P.2d 102 (1965); *see also* Kan. Const. art. 6, § 1 (granting legislature authority to “maintain[] public schools . . . which may be organized and changed in such manner as may be provided by law”); *Burk v. Unified Sch. Dist. No. 329*, 646 F. Supp. 1557, 1564 (D. Kan. 1986) (“A school district is an arm of the state ‘existing only as a creature of the legislature to operate as a political subdivision of the state.’” (quoting *Wichita Pub. Schs. Empls. Union v. Smith*, 194 Kan. 2, 4, 397 P.2d 357 (1964))); Att’y Gen. Op. 81-216 (school district has no authority beyond that expressly or impliedly granted by legislature in statute).

However, school districts do not receive all of their funding from state monies.¹¹ Allowing the state to acquire a school building that was paid for with local funds strikes us as inequitable and likely unintended. It seems to us that if the legislature wanted to take such a drastic route—i.e., taking school district property without compensation, or merely at whatever price the legislature felt like paying—the statute would have said so explicitly.¹²

Thus, should a school district decide to dispose of a school district building at a particular price, and the legislature timely passes a concurrent resolution authorizing a state agency to acquire the property, the state agency would have to acquire the property at the same price the willing buyer had offered to purchase the property. However, should a school district decide to gift a school district building, assuming the legislature timely acts, the state agency could also receive the school district building as a gift.

Sincerely,

/s/ Kris W. Kobach

Kris W. Kobach
Attorney General

/s/ Anthony J. Powell

Anthony J. Powell
Solicitor General

¹¹ See generally K.S.A. 72-5143 (local option budget authority); K.S.A. 72-5457 (school district bonding authority).

¹² Cf. *Biden v. Nebraska*, 143 S.Ct. 2335, 2378–84 (Barrett, J., concurring) (discussing similar principle with regard to the federal “major questions doctrine”).