

**SCHOOL DISTRICTS: Authority to acquire title to school site. Erection of school on site.**

Board of education of a school district of the third class may erect a stone or brick school building on a site to which it has acquired title in fee, free from any valid oil, gas or mineral or surface rights of any kind, under Sec. 576 of the School Code of 1955.

No. 4096

March 1, 1963.

Dr. Lynn M. Bartlett  
Superintendent of Public Instruction  
The Capitol  
Lansing, Michigan

You inform me that a third class school district is interested in acquiring a school site that has many owners and also owners of record of oil, gas and mineral rights.

Based upon these facts, you ask the following questions, which for reasons of clarity have been paraphrased:

1. May a third class school district purchase a school site without purchasing all of the following: surface rights of title holders, mineral rights of title holders, and interests of lessees under outstanding oil and gas leases?
2. If "fee title" requires surrender of all of the above interests, would the district have to secure releases from all holders of record of any interest in oil and gas leases either before or after the expiration of the primary term of the lease, and assuming no production that would extend the term of the lease?

1. Act 269, P.A. 1955, as amended, being C.L.S. 1956 § 340.1, et seq.; M.S.A. 1959 Rev. Vol. § 15.3001, et seq., is known as the School Code of 1955.

Section 576 of the School Code of 1955, provides as follows:

"No board shall build a stone or brick schoolhouse upon any site without first having obtained *title in fee* to the same, or a lease for a period of not less than 99 years, or unless it shall have obtained a lease for a period of not less than 50 years from the United States government or the state of Michigan, or a political subdivision thereof; nor shall any board build a frame schoolhouse on any site for which it does not have a *title in fee* or a lease for 50 years without securing the privilege of removing the schoolhouse." (Emphasis supplied)

A comparable earlier statute requiring a school district to obtain title in fee or a long term lease prior to construction of a stone or brick schoolhouse was before the Michigan Supreme Court in *School District No. Five of Delhi v. Everett*, 52 Mich. 314, and the court declared the purpose of the statute to be a bar to the use of public moneys to construct permanent school buildings on land to which the school district has less than a leasehold interest for ninety nine years.

In Michigan, by Section 1 of Revised Statutes of 1846, Chapter 62, being C.L. 1948 § 554.1; M.S.A. 1957 Rev. Vol. § 26.1, estates in land are divided into estate of inheritance, estates for life, estates for years, and estates at will and by sufferance. Section 2 of the chapter defines estates of inheritance to be in fee simple or in fee.

A school site has been defined as the ground upon which the school is located and such surrounding ground as may be necessary. *Board of Education of Oklahoma City v. Woodworth*, 214 Pac. 1077. It must follow that the site is the land upon which the school is proposed to be erected.

Fee simple title to land has been held to mean absolute and indefeasible ownership of all rights and interest in land, including oil, gas and minerals in the land. *Attorney General v. Pere Marquette Railway Co.*, 263 Mich. 431. Thus, one who would take the fee to the land would take title to the coal, oil, gas and minerals in the land, for it is the highest estate known to the law and carries with it everything within or belonging to it, including oil and gas found therein. *Hays v. Walnut Creek Oil Co.*, 83 S.E. 900.

Under Section 576 of the School Code of 1955, *supra*, the legislature has specified that no stone or brick schoolhouse shall be built on any site until after the board of education has obtained title in fee or lease for a period of not less than 99 years, or a lease for a period of not less than 50 years from the United States government or the state of Michigan, or a political subdivision thereof. No frame schoolhouse shall be built on any site where the board of education does not have title in fee or a lease for 50 years without securing the privilege of removing the schoolhouse.

Consideration must also be given to Act 306, P.A. 1937, as amended by Act 175, P.A. 1962, effective May 17, 1962, being in part C.L. 1948 § 388.851 et seq.; M.S.A. 1959 Rev. Vol. § 15.1961 et seq., which empowers the superintendent of public instruction and state fire marshal to promote the safety, welfare and educational interests of the people by regulating the construction, reconstruction and remodeling of public and private school buildings.

Reading these two acts together, it is clear that the legislature in specifying building on sites to which the board of education has title in fee intended to protect the safety and welfare of school children by requiring that title be taken to the site free of any rights to remove minerals, oil or gas from the site.

Therefore, it is my opinion that the board of education of a third class school district in purchasing a school site in fee must acquire the site free of any outstanding surface rights, mineral rights, oil and gas rights, whether held by lease or any other conveyance or interest.

2. Oil and gas are a part of the real property until they are severed therefrom. *Eadus v. Hunter*, 249 Mich. 190. Persons possessing lawful right to unsevered gas or oil, including the right to go upon the land to remove such deposits, are said to hold rights in land normally obtained by instruments denominated as leases. *Jaenicke v. Davidson*, 290 Mich. 298.

In order to terminate all valid interests of persons of record or of persons in possession, it would be necessary for releases to be obtained from all such persons. A quit claim deed would be sufficient to transfer any interest the

grantor or releasor may have in land, whatever its nature. *Kitchell v. Mudgett*, 37 Mich. 81. For the statutory provision, see C.L. 1948 § 565.3; M.S.A. 1953 Rev. Vol. § 26.522.

Whether a release from a lessee of oil or gas rights is necessary after expiration of a lease, will depend upon the facts and the terms of the lease in each individual case. For one type of outstanding claim, see *Robinson v. Gordon Oil Co.*, 258 Mich. 643, where a lessee of oil and gas rights was held to be in compliance with the terms of a lease by contracting for drilling, bringing machinery on the premises, erecting a derrick and rig and digging a slush pit, the lessee having done some "actual work in connection with drilling" by a certain date, as required by the lease.

In any event, no school district authorized by law to acquire school sites, should purchase land without a title search and title opinion certifying marketable title in fee in the seller, and listing all encumbrances against the property. All persons claiming any oil or gas rights by valid lease, agreement or conveyance, including persons in possession, would be required to surrender and release their interests so that the land is entirely free of any and all encumbrances before the school district would acquire title in fee to the property so that it may construct a stone or brick schoolhouse thereon.

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**SCHOOLS: Annuity contracts – Board of education cannot purchase annuity contracts for employees.**

**A board of education has no authority under existing state law to purchase annuity contracts for employees of the school district.**

No. 4106

March 1, 1963.

Dr. Lynn M. Bartlett, Superintendent  
Department of Public Instruction  
The Capitol  
Lansing, Michigan

You have ask for an opinion by this office on the following question:

Does a local board of education have authority under existing state law to purchase for employees of the school district annuity contracts as defined by Subchapter D, Chapter 1 of the Internal Revenue Code of 1954?

You point out that the question is raised as a result of a 1961 amendment to Subchapter D, Sec. 403 United States Internal Revenue Code of 1954.<sup>1</sup> This section as amended provides in effect that the amounts contributed by a state, political subdivision of a state, or agency or instrumentality of the state, for the purchase of annuity contracts for employees of a school district shall be excluded from the gross income of the employee for the taxable year in which so contributed by the state or other agency, and shall

<sup>1</sup> 26 U.S.C.A. 1962 Cum. Ann. Pocket Part Sec. 403.