

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.

be included in the employee's gross income during the tax year that the contributions are received by the employee.

This is basically a method an employer may use to build an individual retirement fund for each employee. The amendment to the Internal Revenue Code creates an additional incentive, however, since it offers an added benefit of possible tax savings. This benefit may result since interest will accumulate on the full amount, and in a normal situation these funds and interest will be paid to the employee at a time when the employee's income has been substantially reduced due to retirement. Such savings, however, are not assured since a premature payment of the total amount or an increase in the tax rate can result in the payment of additional taxes. The question is, therefore, does a board of education have the authority to initiate a program such as this, and participate to the extent of modifying existing employment contracts to provide for the purchase of annuity contracts with funds normally used for the payment of salaries?

It should be observed first that regardless of whether the necessary funds are obtained by a reduction in salary or by other methods, such as the agreement of an employee to forego a proposed raise, it is the employing school district which must, in fact, purchase the annuity and in this regard the school district is not acting as an agent of the employee, as is the case with payroll deductions.

In the case of payroll deductions the school board merely pays a portion of the wages due the employee to someone else as directed by the employee. With respect to the annuity contracts here involved, when the employee agrees to a reduced salary or to forego a raise, the portion surrendered is no longer a part of his salary and this amount remains public funds in the treasury of the school district. It is the school district's funds therefore which must be used to purchase the annuities. If such action by a school district is to be valid, authority therefor must exist to expend public funds in this manner.

The powers of the school board are found embraced within the School Code of 1955.<sup>2</sup> More specifically, Chapter 9, Sec. 561 through 620 set out the board's general powers and duties. A review of these provisions indicate clearly that the legislature did not by express provision authorize a school board to purchase annuity contracts, and in view of the accepted rule that school districts and school officers have only such power as the statute expressly and impliedly grants to them,<sup>3</sup> it is only necessary to decide whether this power is to be implied. In this respect, since the amendment to the Internal Revenue Code did not occur until 1961, there is no reason for assuming that the legislature in any way contemplated this type of plan when the above School Code was enacted in 1955.

It is significant that the legislature has considered it necessary to enact specific provisions authorizing a school board to provide hospitalization and health insurance coverage for employees and to use money in the general

<sup>2</sup> C.L.S. 1956 § 340.1 et seq.; M.S.A. 1959 Rev. and 1961 Cum. Supp. § 15.3001 et seq.

<sup>3</sup> *Jacox v. Board of Education*, 294 Mich. 126.

fund of the school district for this purpose.<sup>4</sup> This provision of the School Code of 1955 was considered by this office in Opinion No. 3279 issued on July 21, 1958. This opinion held that a school board has no authority to contract for life insurance for employees, and in so holding applied a rule of law considered applicable to the present situation. The pertinent part of this opinion as it appears on page 208, O.A.G. Vol. II, 1958, is as follows:

“Clearly, life insurance is not among the types of insurance specifically authorized to be purchased by the statute. When a statute purports to confer powers upon its creature, the enumeration thereof in a particular field must be deemed to exclude all others of a similar nature in that same field. Such a holding is consistent with the well established rule of statutory construction that express mention of one thing implies the exclusion of other things. Thus, it must be concluded that the authorization to purchase insurance protection is limited to the types of insurance specifically enumerated.”

The question involved here is not insurance. However, the legislature has enacted extensive legislation providing for a retirement system for public school employees.<sup>5</sup> In view of such provisions and for the reasons set out in Opinion No. 3279, it must be concluded that the statutes in effect at this time do not authorize a school board to purchase annuities for employees.

To specifically answer your question, it is the opinion of this office, based on the lack of express authority and the lack of language intimating that such power was intended to be implied, that a local board of education does not have authority to purchase annuity contracts as defined by Subchapter D, Chapter 1 of the Internal Revenue Code of 1954.

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<sup>4</sup> C.L.S. 1956 § 340.617; M.S.A. 1959 Rev. § 15.3617.

<sup>5</sup> Act No. 136, P.A. 1945, as amended, C.L. 1948 § 38.201 et seq.; M.S.A. § 15.893(1) et seq.