

THE ACQUISITION, USE, AND DISPOSITION OF SCHOOL PROPERTY

by

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## ABSTRACT

This study examines the historical development of case law pertaining to the acquisition, use, and disposition of school district property. The study includes an analysis of 84 court cases involving litigation from a variety of states and court jurisdictions. The cases briefed in this study are clustered into subtopics to include the general authority of school districts to acquire, use, and dispose of real property in accordance with applicable federal or state laws.

## DEDICATION

As with most worthy intellectual pursuits, this research study took an extraordinary amount of time and effort to complete. There were many occasions when completion seemed an impossibility; however, with the help of loved ones the starts, stops, and stalls eventually yielded the product here enclosed. My wife Gina championed my cause. She was patient, but persistent in her support. In my absence she assumed the role of mother, father, and study coach. In short, she has been an incredible friend and partner in this process for which I will always be thankful.

## ACKNOWLEDGMENTS

There are many individuals who provided an unusual amount of support as I worked to complete this study. Dr. Dave Dagley led this effort. I am appreciative of his support, his dependability, and his patience as I navigated the learning process relating to this legal study. His intellect, his capacity to make something from nothing, and to provide direction in the midst of chaos are inspiring and a testament to the rich tradition of superb faculty support at The University of Alabama.

Dr. James Wright willingly gave considerable time and effort to my study. His long drives to Tuscaloosa from Montgomery and his constant encouragement to see this project through made me realize how pivotal a role he played in the completion of this dissertation. He is a fierce friend to the study and advancement of educational leadership.

The remaining committee members also were instrumental in guiding me through this process and provided valuable feedback and insight as I worked to develop my knowledge of qualitative research and skill in writing. They are individually and collectively impressive technicians of their craft. Without them I would surely have fallen short.

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## CHAPTER I

### INTRODUCTION TO THE STUDY

#### Introduction

America's first public school, The Boston Latin School, was established in April, 1635. Since then, thousands of public schools have been erected and placed in operation. In fact, according to data from the National Center for Education Statistics (NCES, 2007) there were 97,382 public schools in operation during the 2005-2006 school year. Comparatively, Alabama operated 1,937 public schools during this same year (Alabama Department of Education, 2008).

Although the Boston Latin School is still in operation, the original building, its location, and programs are new. Much like the Boston Latin School, many schools have experienced significant change over time. Some have been reconfigured to better serve the communities in which they are located by adding or removing grades served and programs offered. Thousands have been remodeled or have had new additions added; yet other schools have been moved or closed to meet the needs of school districts.

In short, taxpayers have invested billions of dollars to acquire and maintain school district property, and based on current trends their outlay will continue to grow at a significant pace for many more years. The United States General Accounting Office (GAO, 1997) reports a significant increase across all regions of the country in the volume of school construction occurring since 1990. Expenditures for public school construction and related expenses have grown by more than 38% during that time and now exceed \$25 billion annually. They report, much of these expenditures relate directly to the construction of new school buildings, but also

indicate a significant amount of money is being spent on acquiring land and equipping schools with needed resources. The GAO (1997) estimates the latter totaled \$3.2 billion dollars for 1997. This represents an increase of more than 30% from 1990.

Table 1 provides an overview of school construction expenditures by region over a 7-year period ending in 1997.

Table 1

*Comparison of School Construction Expenditures*

Region	Annual expenditures		Change	
	1990	1997	Dollars	Percent Growth
Northeast	\$2,995,724,042	\$4,036,237,882	\$1,040,513,840	34.7%
Midwest	\$3,592,950,722	\$5,851,543,266	\$2,258,592,544	62.9%
South	\$7,072,367,197	\$8,977,326,098	\$1,904,958,901	26.9%
West	\$4,146,575,307	\$5,831,205,540	\$1,684,630,230	40.6%
U.S. total	\$17,807,617,268	\$24,696,312,786	\$6,888,695,518	38.7%

*Note.* From U.S. Department of Education School Construction Expenditure Report, Washington D.C., Government Printing Office 2000.

In a more recent report published by American School University, the positive growth curve for school construction is supported. Accordingly, school construction expenditures exceeded \$36 billion during the 2006 fiscal year, \$19 million of which went for new school construction, \$4.8 million for additions, and \$12.8 million for modernizing facilities and teaching resources (American, 2006). These expenditures represent nearly 10% of the nation's total education budget as reported by Agron (2007) in a report entitled *Revenues and Expenditures for Public Elementary and Secondary Education School Year 1999-2000*, where he cites the nation spent nearly \$373 billion during the year 2000.

Aside from securing funding for the aforementioned school construction boon, which will not be addressed in this study, there are a labyrinth of legal issues school leaders must work through successfully in order to meet the demand for new and improved schools. This is particularly true in school districts that are located in geographic areas where available property for new school construction is limited. In 2002, the Los Angeles Unified School District developed a plan to build 79 new schools. However, the district struggled to locate and acquire adequate properties for the proposed schools. Therefore, the district adopted a joint use plan to share facilities and also processed 60 eminent domain resolutions (Shigley, 2002). School districts are faced with property acquisition issues to include general authority to select property; selecting, purchasing, and leasing property; levying taxes and selling bonds; and eminent domain.

These large investments relating to the construction of new school buildings and investments in teaching and learning resources have grown exponentially. It is true schools are still furnished with many traditional teaching and learning resources, such as books and chalk boards, but the digital era has created significant change in the types of resources requisite for schools to be effective. Televisions, digital recorders, cameras, computer networks, expansion of athletics and extracurricular activities have created a need for growth in the number and kinds of resources needed. Therefore school districts are investing in these types of properties at record levels (Garry, 2004).

In addition to managing the growth in number and kinds of school district property, albeit with the availability of an exhaustive choice of planning and inventory depletion controls methods, the digital teaching and learning revolution has created new challenges for school leaders. The boundaries of where teaching and learning takes place have become less distinct.

With the expansion of access to the internet and the creation of distance learning and asynchronous classrooms teaching, learning can occur anytime and anywhere. Schooling has entered into unprecedented times where educators and students can retrieve information on demand.

Reading, writing and arithmetic have gone cyber. If the schoolteachers of the 1800s and early 1900s could see the classroom of 2005, what would they say? The classroom has evolved from the one room schoolhouse to a virtual classroom. With this comes change in the role of the educator. (O'Neil, 2006, p. 1)

These changes blur school personnel's ability to separate their work and personal time, which, in turn, creates confusion about when and where it is permissible to use school resources. These uncertainties inherently create the potential for conflict relating to the proper use of school district property and ownership of related outputs. As a result, related disputes are being brought before the courts for remedies. In *Chicago Board of Education v. Substance* (2003), a dispute arose when a teacher made multiple copies of a district-developed assessment, which they claimed to be a secure test, along with prose meant to ridicule portions of the test. The district filed a copyright violation claim and won in the Seventh Circuit Court. The defendant filed an appeal to the Supreme Court, which was denied (Borkowski & Berger, 2005).

Dealing with requests to use school district property from external entities is another important task of school leaders. Discerning when such requests should be honored or denied, understanding local, state, and federal policies and laws relating to facilities use are critical aspects of school district property management. Getting it wrong could lead to a public relations fiasco and potentially give rise to a legal claim.

As school district leaders acquire and manage the utilization of available resources, whether it is school buildings, books, or intellectual property, they simultaneously must prepare

for the property's obsolescence and subsequent disposal. Related processes too can create a climate for conflict and litigation and can best be managed by having knowledge of the subject.

### Statement of the Problem

Managing district property has become a significant challenge for school administrators and elected officials. School superintendents and district leaders are expected to increase student achievement; recruit, develop, and retain highly qualified teachers; balance the budget; and maintain adequate facilities for students, employees, and the communities being served. Likewise, school board members are expected to govern school districts by working in collaboration with school superintendents. Given that most school district leaders rise from the teaching ranks, few have a technical background in law, accounting, or property management and planning. Yet, they are charged with performing complex need forecasting, ensuring available resources are being used in accordance with applicable laws, and providing for the appropriate disposition of said properties when they are no longer of use to the district. Similarly, school board members, be they elected or appointed, are often novices when it comes to statutory or case law and have limited knowledge of governmental requirements about school district property management. Plainly stated, those responsible for making critical decisions about the acquisition, use, and disposition of school district property have insufficient requisite skills.

### Statement of Purpose

The purpose of this study was to conduct a thorough analysis of relevant issues regarding the acquisition, use, and disposition of school property. Moreover, this study attempted to define

school property in a historical and legal context by examining the development of statutory and case law so that school administrators can make informed decisions about managing the acquisition, use, and disposition of school district property.

### Research Questions

1. What issues arose in cases involving the acquisition, use, and disposition of public school district property?
2. How have federal and state courts interpreted school districts' express authority to acquire, use, and dispose of school district property?
3. What trends have emerged from case law relating to the acquisition, use, and disposition of school district property?
4. What legal implications should school district leaders consider when acquiring, using, or disposing of school district property?

### Definitions

*Appeal*: "A proceeding undertaken to have a decision reconsidered by a higher authority; esp., the submission of a lower court's or agency's decision to a higher court for review and possible reversal" (Garner, 1996, p. 39).

*Brief*: "A written statement setting out the legal contentions of a party in litigation, esp. on appeal; a document prepared by counsel as the basis for arguing a case, consisting of legal and factual arguments and the authorities in support of them" (Garner, 1996, p. 81).

*Case law*:

Reported decisions of appeals courts and other courts which make new interpretations of the law and therefore can be cited as precedents. These interpretations are distinguished

from “statutory law,” which is the statutes and codes (laws) enacted by legislative bodies; “regulatory law,” which is regulations required by agencies based on statutes; and in some states, the common law, which is the generally accepted law carried down from England. The rulings in trials and hearings that are not appealed and not reported are not case law and therefore not precedent or new interpretations. Law students principally study case law to understand the application of law to facts and learn the courts’ subsequent interpretations of statutes. (Lectlaw, n.d., p. 80)

*Certiorari*: “An extraordinary writ issued by an appellate court, at its discretion, directing a lower court to deliver the record in the case for review” (Garner, 1996, p. 93).

*Eminent domain*:

The power of a governmental entity (federal, state, county, or city government; school district; hospital district; or other agencies) to take private real estate for public use, with or without the permission of the owner. The Fifth Amendment to the Constitution provides that “private property [may not] be taken for public use without just compensation.” The Fourteenth Amendment added the requirement of just compensation to state and local government takings. The usual process includes passage of a resolution by the acquiring agency to take the property (condemnation), including a declaration of public need, followed by an appraisal, an offer, and then negotiation. If the owner is not satisfied, he/she may sue the governmental agency for a court’s determination of just compensation. The government, however, becomes owner while a trial is pending if the amount of the offer is deposited in a trust account. Public uses include schools, streets and highways, parks, airports, dams, reservoirs, redevelopment, public housing, hospitals, and public buildings. (Lectlaw, n.d., p. 94)

*Personal property*: “Any movable or intangible thing that is subject to ownership and not classified as real property” (Garner, 1996, p. 574).

*Preliminary injunction*: “A temporary injunction issued before or during a trial to prevent an irreparable injury from occurring before the court has a chance to decide the case” (Garner, 1996, p. 358).

*Property right*:

The right and interest which a man has in lands and chattels to the exclusion of others. It is the right to enjoy and to dispose of certain things in the most absolute manner as he pleases, provided he makes no use of them prohibited by law. (Lectlaw, n.d., p. 100)

*Quitclaim*: “To relinquish or release” (Garner, 1996, p. 588).

*Real property:*

1) all land, structures, firmly attached and integrated equipment (such as light fixtures or a well pump), anything growing on the land, and all “interests” in the property, which may include the right to future ownership (remainder), right to occupy for a period of time (tenancy or life estate), the right to drill for oil, the right to get the property back (a reversion) if it is no longer used for its current purpose (such as use for a hospital, school or city hall), use of airspace (condominium) or an easement across another’s property. Real property should be thought of as a group of rights like a bundle of sticks which can be divided. It is distinguished from personal property which is made up of movable items. 2) One of the principal areas of law like contracts, negligence, probate, family law and criminal law. (Lectlaw, n.d., p. 100)

*Reversion:*

The interest that is left after subtracting what the transferor has parted with from what the transferor originally had; Specif., a future interest in land arising by operation of law whenever an estate owner grants to another a particular estate or a term of years, but does not dispose of the entire interest. (Garner, 1996, p. 622)

*Statute:* “A law passed by a legislative body” (Garner, 1996, p. 675).

*Title:* “The union of all elements (as ownership, possession, and custody) constituting the legal right to control and dispose of real property; the legal link between a person who owns property and the property itself” (Garner, 1996, p. 721).

*Writ:* “A courts written order in the name of the state or other competent legal authority, commanding the addressee to do or refrain from doing some specified act” (Garner, 1996, p. 785).

### Limitations of the Study

1. The study was conducted by a practicing superintendent of schools who may not have possessed a sufficient level of legal expertise to interpret complex legal opinions and outcomes.

2. This study was limited to public K-12 education in the United States with an emphasis on Alabama.

3. This study may have included some disclosed or unwitting bias by the researcher.

### Delimitations of the Study

1. This study excluded the topic of search and seizure occurring on school district property.

2. This study excluded legal issues and claims relating to damage of school district property.

3. This study excluded issues relating to illegal conduct on or with school district property.

4. This study excluded school litigation involving personal injuries occurring on school district property.

5. This review purposely excludes litigation involving foreign courts or properties abroad and limits the scope of the review to public schools serving any combination of grades kindergarten through 12th.

### Organization of the Study

Chapter I served to introduce the topic of the study. This chapter included a short paragraph stating the problem. It gave the purpose of the study and delineated the research questions. In addition, it included any perceived limitations of the study conducted and provided operational definitions associated with key terms.

Chapter II contains an examination of the literature relating to the acquisition, use, and disposition of school district property. In addition, it includes a comprehensive review of the

origin of school district property and related federal, state, and local laws and regulations pertaining to the topic of study.

Chapter III provides a description of the methods and procedures to utilized in this study. It provides rationale and details specific to qualitative study.

Chapter IV includes a comprehensive analysis of select cases relating to the topic of study.

Chapter V provides closure to the study. It includes a synopsis of the study. In addition it provides the opportunity for the researcher to synthesize the information gathered and analysis processes used for the purpose of developing conclusions and recommendations.

## CHAPTER II

### REVIEW OF THE LITERATURE

#### Introduction

For hundreds of years not much thought has been given to the “things of education.” Rather, educational priorities have focused more purposefully on processes pertaining to teaching and learning. The human elements of education--the teachers, students, and administrators--have been the foci for much of the research. The buildings where instruction occurs, the land the schoolhouses are built upon, and the means used to accomplish the end have been nothing but an afterthought. As a result, there is great scarcity in available research relating to this important aspect of educational leadership.

However, advances in knowledge about teaching and learning and the improvement and sophistication of instructional resources have increased demand for information and the cost of acquiring these resources. This has created heightened interest in the nuances of school district property management; thus the “things of education” have become much more relevant to researchers (Castaldi, 1994).

This study will focus on the facilities and resources that support teaching and learning. More specifically, it will provide readers with critical information relating to the acquisition, use, and disposition of school district property. It will examine the literature identified as being relevant to this study and provide a descriptive review of it; so that the information contained herein can be contextualized within the existing body of knowledge.

This review will begin with an inspection of source data which delineate the emergence of public schooling in America and the development of properties designated for such purposes. This chapter will include information relating to federal and state constitutional issues, statutory authority, fair use, property disposition processes, and emerging trends in school property management and litigation.

### Federal Role in Education

The United States federal government has always been interested in promoting and supporting education (Alexander & Alexander, 1992). This was evidenced during the period when the American Revolutionary War was nearing an end and westward expansion began to accelerate. As new communities developed, federal engineers surveyed lands. This was, in part, a result of the passage of the Land Ordinance of 1785, which

specified how property lines in the western territory should be measured with a chain. . . . The document stipulated for the land to be divided into townships, each six miles square, and subdivided into 36 lots each one mile square. (Tyack, 1985, p. 1)

The Land Ordinance of 1785 also stipulated that the 16th section of each township be set aside to support the advancement of schooling. This set-aside provided 640 acres in each township for education. In all, the federal government transferred millions of acreage to state trust lands (Souder & Fairfax, 1996).

Territories obtaining statehood after 1848 received two sections of land in each township. Arizona, New Mexico, Oklahoma and Utah received four sections in each township upon gaining statehood (Hoyde, 1996). Table 2 provides land grant details by year, state, sections awarded, and the total acres received.

Table 2

*Land Grant Details by Year, State, Sections Awarded, and the Total Acres Received*

Year of statehood	State	Granted	Total acres granted to states for schools
1803	Ohio	16	724,266
1812	Louisiana	16	807,271
1816	Indiana	16	668,578
1817	Mississippi	16	824,213
1818	Illinois	16	996,320
1819	Alabama	16	911,627
1821	Missouri	16	1,221,813
1836	Arkansas	16	933,778
1837	Michigan	16	1,021,867
1845	Florida	16	975,307
1846	Iowa	16	1,000,679
1848	Wisconsin	16	982,329
1850	California	16	5,534,293
1858	Minnesota	16	2,874,951
1859	Oregon	16, 36	3,399,360
1861	Kansas	16, 36	2,907,520
1864	Nevada	16, 36	2,061,967
1867	Nebraska	16, 36	2,730,951
1876	Colorado	16, 36	3,685,618
1889	N. Dakota	16, 36	2,495,396
1889	S. Dakota	16, 36	2,733,084
1889	Montana	16, 36	5,198,258
1889	Washington	16, 36	2,376,391
1890	Idaho	16, 36	2,963,698
1890	Wyoming	16, 36	3,472,872
1896	Utah	2, 16, 32, 36	5,844,196
1907	Oklahoma	16, 36	2,044,000
1912	New Mexico	2, 16, 32, 36	8,711,324
1912	Arizona	2, 16, 32, 36	8,093,156

*Note.* From *The History of Public Land Law Development*, Appendix C. (Adapted from P. W. Gates (1968), Washington D.C. GPO).

Two years later, in 1787, the Continental Congress passed the Northwest Ordinance. This law established criteria for territories seeking statehood to meet. Specifically, Article III of the Northwest Ordinance required prospective states to develop compacts to include “Provisions for

education, habeas corpus, due process, and religious freedom” (Alexander & Alexander, 1992, p. 50).

Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and in their property, rights, and liberty they never shall be invaded or disturbed unless in just and lawful war authorized by Congress; but laws founded in justice and humanity shall, from time to time, be made, for preventing wrongs being done to them, and for preserving peace and friendship with them. (Alexander & Alexander, 1992, p. 752)

Although the federal government has consistently provided indirect support for education, it has never had direct control of the schooling function. For example, The Morrill Act provided 30,000 acres of public land to promote the establishment of colleges of agriculture and mechanical arts. As a result of this act, agricultural colleges were established in every state. Southern states established two of each due to state laws on the separation of races. Special land grants provided for additional normal schools, reform schools, and even a women’s college. In all, Congress provided million of acres to states for the purpose of developing schools. Despite these special land grants, the federal government had no constitutional authority over the grantees. In fact, the United States Constitution makes no mention of education at all (Alexander & Alexander, 1992).

However, education did become a consideration in later amendments, albeit indirectly. The Tenth Amendment to the U.S. Constitution establishes the doctrine that all powers not expressly provided to the federal government are therefore vested in the states. Accordingly, there are only three scenarios in which federal control can be derived. First, upon acceptance of federal grants, states are obligated to subject themselves to the General Welfare Clause. Secondly, the Federal government can exercise its authority under the Commerce Clause, or in

actions relating to the protection of individual rights guaranteed by the United States Constitution (Alexander & Alexander, 1992).

The General Welfare Clause provides Congress with the authority to provide funding for education. It gives Congress independent power to regulate and spend for the common defense and welfare. According to Natelson (2004), the intent of the Constitution's framers was to provide for a broad interpretation of the General Welfare Clause. Additionally, he posits the Commerce Clause provides a mechanism for federal involvement in education. The regulation of commerce naturally lends itself to include education, particularly as it relates to the transfer of material goods.

In *Fletcher v. Peck* (1810), the Supreme Court held that state land grants are protected from repeal as a result of the Contracts Clause of the Constitution (Art. I, sec. 10, cl. 1). Later cases correspondingly supported the notion that land becomes private property after conveyance by governmental agencies.

The Property Clause of the Constitution (Art. IV, sec. 3, cl. 2) provides Congress the authority to dispose of land owned by the government. As a result of this provision, Congress disbursed most federal land through sales or grants to states, firms, or individuals. Many grants were made specifically to support education, the construction of railroads, or other beneficial activities (Alexander & Alexander, 1992).

### The States' Role in Education

Today, every state constitution contains an education provision (Tractenburg, n.d.). The Tenth Amendment to the United States Constitution provided the following statement: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States,

are reserved to the States respectively, or to the people” (p. 16). Given the absence of education as a specific topic, it is a power delegated to the states. However, the United States Supreme Court has the power to declare that something not addressed in the Constitution is closely associated to other aspects of the Constitution that the unstated power is an essential interest, and therefore has constitutional protection. Thus far, the Supreme Court has not made such a ruling and in the absence of one, states maintain plenary power over educational matters in their jurisdictions (Russell, 2000). “The states have always had the legal authority and responsibility for education” (IEL, 2001, p. 36).

According to Tractenberg (n.d.), the inclusion of educational provisions in state constitutions followed an erratic pattern. During America’s formative years, beginning in 1776 and lasting until approximately 1834, only half of state constitutions included language even mentioning education, most of which initially described the value of an educated citizenry, but stopped short of explicitly providing for it. Not until the early 1800s did states begin to adopt stronger language in support of education. From 1835 forward, most new states ratified constitutions with language expressly requiring the establishment and support of education similar to the one adopted by Pennsylvania, which states, “The General Assembly shall provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth” (The Pennsylvania Constitution, 1776, Art III § 14).

### *Alabama*

All six of Alabama’s constitutions have recognized the essential need for state government to provide its citizenry access to a public education. The articles relating from each of the six are provided below:

*The Constitution of the State of Alabama 1819 art. vi:*

Schools and the means of education shall forever be encouraged in this State; and the General Assembly shall take measures to preserve, from unnecessary waste or damage, such lands as are or hereafter may be granted by the United States for the use of schools within each township in this State, and apply the funds, which may be raised from such lands; in strict conformity to the object of such grant. The General Assembly shall take like measures for the improvement of such lands as have been or may be hereafter granted by the United States to this State, for the support of a Seminary of learning, and the moneys which may be raised from such lands, by rent, lease, or sale, or from any other quarter, for the purpose, aforesaid, shall be and remain a fund for the exclusive support of a State University, for the promotion of the arts, literature, and the sciences: and it shall be the duty of the General Assembly, as early as may be, to provide effectual means for the improvement and permanent security of the funds and endowments of such institutions.

*The Constitution of the State of Alabama 1861 art. vi:*

Schools, and the means of education, shall forever be encouraged in this State; and the General Assembly shall take measures to preserve, from unnecessary waste or damage, such lands as have been granted by the United States for the use of schools, within each township in this State, and apply the funds, which may be raised from such lands, in strict conformity to the object of such grant. The General Assembly shall take like measures for the improvement of such lands as have been granted by the United States to this State, for the support of a seminary of learning, and the moneys which may be raised from such lands, by rent, lease, or sale, or from any other quarter, for the purpose aforesaid, shall be and remain a fund for the exclusive support of a State University, for the promotion of the arts, literature and the sciences; and it shall be the duty of the General Assembly, as early as may be, to provide effectual means for the improvement and permanent security of the funds and endowments of such institution.

*The Constitution of the State of Alabama 1865 art. vi:*

Schools, and the means of education, shall forever be encouraged in this State; and the General Assembly shall take measures to preserve, from unnecessary waste or damage, such lands as have been granted by the United States for the use of schools, within each township in this State, and apply the funds, which may be raised from such lands, in strict conformity to the object of such grant. The General Assembly shall take like measures for the improvement of such lands as have been granted by the United States to this State, for the support of a seminary of learning, and the moneys which may be raised from such lands, by rent, lease, or sale, or from any other quarter, for the purpose aforesaid, shall be and remain a fund for the exclusive support of a State University, for the promotion of the arts, literature and the sciences; and it shall be the duty of the General Assembly, as early as may be, to provide effectual means for the improvement and permanent security of the funds and endowments of such institution.

*The Constitution of the State of Alabama 1868 art. xi, sec. 1:*

The common schools, and other educational institutions of the State, shall be under the management of a Board of Education, consisting of a Superintendent of Public Instruction and two members from each Congressional District. The Governor of the State shall be ex officio a member of the Board, but shall have no vote in its proceedings.

*Constitution of the State of Alabama 1875 art. xiii, sec. 1:*

The general assembly shall establish, organize, and maintain a system of public schools throughout the state, for the equal benefit of the children thereof between the ages of seven and twenty-one years; but separate schools shall be provided for the children of citizens of African descent.

*Constitution of the State of Alabama 1901 art. xiv, sec. 256:*

The legislature shall establish, organize, and maintain a liberal system of public schools throughout the state for the benefit of the children thereof between the ages of seven and twenty-one years. The public school fund shall be apportioned to the several counties in proportion to the number of school children of school age therein, and shall be so apportioned to the schools in the districts or townships in the counties as to provide, as nearly as practicable, school terms of equal duration in such school districts or townships. Separate schools shall be provided for white and colored children, and no child of either race shall be permitted to attend a school of the other race.

In accordance with the Constitutional authority to provide for schooling in Alabama, and with the statutory authority provided for by The Code of Alabama (1901) §16-47-3, which enables school district to purchase, hold, lease, or sell property, Alabama school districts have acquired property and furnished schools for more than 100 years. The aforementioned statute reads:

Such corporation may hold and may lease, sell, or in any other manner not inconsistent with the object or terms of the grant or grants under which it holds dispose of any property, real or personal, or any estate or interest therein, remaining of the original or any subsequent grant by Congress, or by this state, or by any person, or accruing to the corporation from any source, including also the proceeds of the University Fund, as to it may seem best for the purposes of its institution. (School Code 1927, & sect; 545; Code 1940, T. 52, & sect; 488)

Additionally, the law vests real and personal property with local county school boards as delineated in the Code of Alabama (School Code 1927, §95; Code 1940, T. 52, §71; Acts 1994, No. 94-681, p. 1313, §1):

All of the property, estate, effects, money, funds, claims, and donation now or hereafter vested by law in the public school authorities of any county for the benefit of the public schools of any county are hereby transferred and vested in the county board of education, and their successors in office. Real and personal estate granted, conveyed, devised, or bequeathed for the use of any particular county, school district, or public school shall be held in trust by the county board of education for the benefit of any such county school district or school.

### Eminent Domain

Hornberger (2005) argues eminent domain was originally intended to enable the federal government to acquire land for public use. This was meant to provide places to construct courthouses and government buildings. The concept of public use has expanded since then and now includes public safety, health, interest, or convenience. The taking of land for the purpose of building, improving, or expanding roadways is an example of the use of eminent domain. It can also include the taking of land for school use.

According to Larson (2004), eminent domain is the power possessed by states to appropriate property for public use. The process for taking land under eminent domain involves condemnation proceedings when the land owner refuses to sell. It includes the following steps: (1) The government makes an offer to purchase property based on the fair market value of the property. (2) If the owner rejects the offer to purchase, the government files for court action to exercise its statutory authority to invoke eminent domain. (3) The government posts notice of such, and then provides the owner with due process in the form of a hearing. (4) The government must prove they have made a good faith effort to purchase the land, and that the land is needed

for public use. (5) The property owner is given the opportunity to respond. If the government is successful, then a decision must be made pertaining to the fair market value of the property in question. First priority is given to deal with any encumbrances on the title of the property. Any available excess is provided to the property owner.

The Miami Dade County School Board misinterpreted their authority to invoke eminent domain proceedings in 2005, under Florida Statute. This is one example of how school districts can misinterpret their authority. The school board attempted to utilize their eminent domain authority so that they could acquire property on behalf of a local municipality. The matter was sent to the Florida Attorney General for clarification. Two issues were in question. First, under the auspices of Florida Statutes § 1013.24 could a school board proceed with the condemnation of an owner's property with the intent to have the said municipality make payment for the property or could the district enter into a lease arrangement with the municipality? The Florida Attorney General advised such action would violate the state's eminent domain statute (Crist, 2005).

The Fifth Amendment to the U.S. Constitution, which was ratified in 1791, provides governmental authority to take such lands but provides two important clauses meant to protect citizens: "No person shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation" (p. 1).

Hornberger (2005) argues that a fundamental right in a free and democratic society is the right to own private property. He points out two important clauses from the Fifth Amendment: the right to due process and the right to just compensation.

Larson (2004) states, “Eminent domain refers to the power possessed by the state over all property within the state, specifically its powers to appropriate property for a public use” (p. 1).

He identifies several types of takings which can occur through eminent domain:

1. Complete taking: In a complete taking, all the property at issue is appropriated.
2. Partial taking: If the taking is a part of a piece of property, such as the condemnation of a strip of land to expand the road, the owner should be compensated both for the value of the strip of land and for any effect the condemnation of that strip has on the value of the owner’s remaining property.
3. Temporary taking: Part or all of the property is appropriated for a limited period of time. The property owner retains title, is compensated for any losses associated with the taking, and regains complete possession of the property at the conclusion of the taking. For example, it may be necessary to temporarily use a portion of any adjacent parcel of property to complete construction or highway project.
4. Easements and Rights of Way: It is also possible to bring an eminent domain action to obtain an easement or right of way. For example, a utility company may obtain an easement over private land to install and maintain power lines. The property owner remains free to use the property for any purpose which does not interfere with the right of way or easement. (Larson, 2004, p. 2)

Section 1013.24 of Florida Statute provides the following:

There is conferred upon the district school boards in the state the authority and right to take private property for any public school purpose or use when, in the opinion of the school board, such property is needed in the operation of any or all of the public schools within the district. Including property needed for any school purpose or use in any school district or districts within the county. The absolute fee simple title to all property so taken and acquired shall vest in the district school board, unless the school board seeks to appropriate a particular right or estate to such property. (Crist, 2005 n.p para. 3.)

According to Alexander and Alexander (1992), local school systems hold property in trust for public school purposes and do not actually own it. Although state legislatures provide local school districts with the authority to acquire, use, and hold property they do not surrender their express authority or control over such. In fact, legislatures have the power to modify school district’s use of the property at will, which could diminish or expand a local education agency’s ability to utilize property it holds in trust.

## Use of School District Property

Castaldi (1994) noted,

Public school facilities belong to the people of the school district. They are provided primarily for the education of the children, youth, and adults of the school district. Unfortunately, these facilities are often used for this purpose less than 50 percent of the available time during the week and less than 60 percent of the time during the year. . . . Due consideration should be given to the use of school facilities for recreational and cultural community functions. (p. 132)

School leaders often receive requests from citizens, private groups, and quasi-governmental agencies seeking access to and use of school district property. Edwards (1926)

highlighted the significance of this issue nearly 100 years ago when he stated,

The growing tendency to regard education as something more than mere textbook knowledge and to relate more definitely the work of school to the life of the community has led to wider use of the school plant. Everyone must appreciate the economic loss when a well-equipped school building, for one reason or another, is not made to contribute in the largest possible way to the social and general educational well-being of the community in which it is located. (p. 585)

Likewise, Riley (1906) argues that schools should permit the use of their facilities and resources beyond the regular school day to provide citizens with more opportunities to participate in recreational and social activities.

School district lands, buildings, and real property contained therein are owned by federal, state, or local governments whom represent their constituencies. Given that, the public often expects, sometime unfettered, access and use of these facilities and equipment. Therefore, school administrators often feel obligated to honor such requests; however, doing so can lead to confusion and conflict. Uerling (2002) describes this potential: “Problems sometimes arise when the nature of the group or proposed activity seems to be controversial or inconsistent with the purposes of the institution or character of the property” (p. 1). Additionally, Slutzky (1994)

contends the casual use of school district property is problematic because it unnecessarily exposes school boards to potential legal action.

There have been a number of incidents where individuals or groups have sought court relief when their requests to use school facilities or property have been denied or restricted. Uerling (2002) describes the concept of creating a public forum when access is granted and the pitfalls and perils of each. He delineates and distinguishes the differences between a traditional public forum, a designated public forum, and a nonpublic forum. Traditional public forums, such as city parks, the steps at a courthouse, and the lawns of the Washington Mall, have historically been viewed as places where citizens could assemble, debate, and communicate their views freely. A designated public forum is a public space, but is distinguished by its purpose and function thus limiting the public's right to assemble without restriction. Finally, a nonpublic forum creates a selective access scenario even in cases where the property is owned by the government.

A review and analysis of these types of cases and their eventual disposition are forthcoming in Chapter IV of this study. However, the literature indicates the necessity for school districts to establish clear guidelines governing the use of school facilities when access is provided. These regulations should include the prohibition of activities that might damage property, involve illegal conduct, or allow the use of tobacco or alcohol, or compete against local enterprises (Akers, 1984).

Aside from renting school buildings, school districts sometimes provide for the use of real property within school buildings. Some school districts provide parents and the community access to school libraries, where parents and family members of students are able to visit the school library after hours to read. Yet, others extend such privileges to computer usage and

provide visitors with access to the internet through district web portals (Randolph, 2003).

Randolph (2003) describes how these extended services assist parents to stay informed. Parents can access a student's information to include lunch money balances, attendance, grades, and discipline record.

Some school districts allow individuals or groups to ride or rent school buses. In fact, the Illinois Code authorizes school districts to provide transportation services to other entities during times when school buses are not needed to transport students. It stipulates the school board should be reimbursed for related costs. It specifically states,

The school board of any school district may provide transportation services to any non-profit organization for recreational, cultural, educational, and public service programs operated by the organization for the benefit of its members. Transportation shall be provided to non-profit organizations during times when the vehicles used are not needed for the transportation of students between school and their homes. The school board shall make a charge for such transportation in an amount equal to the cost thereof, which shall include a reasonable allowance for depreciation of the vehicles used. The school board is authorized to enter into contracts, leases, or agreements covering the use of transportation by non-profit organizations. The school board shall add to the charges made for the use of transportation a reasonable amount to cover any increase in insurance premiums incident to the use of transportation by the organization. Nothing in this Section shall be construed to terminate, either permanently or temporarily, the status of the vehicles used by the organization as school buses. (105 ICLS 5/29-3.5)

A random review of school district policies pertaining to facility use indicates renting school buildings and real property such as furniture, kitchen equipment, and audio visual equipment is common practice. As an example, the Seven Oak School Division adopted a policy governing the school facilities and equipment in June 2005:

The Seven Oaks School Division maintains a policy that encourages the use of physical facilities under its control by groups and organizations...Buildings and facilities should be available. Arrangements for seating or any other special facilities or equipment shall be made at the time rental permit is issued. Extra compensation shall be paid to cover charges for supervision, transferring equipment, setting up equipment already in the building, etc. (Seven Oaks, 2005, n.p.)

In recent years, a new development has emerged relative to how school district property is managed and used. Many school districts have begun to explore joint-use agreements to take advantage of unused capacity. The State of California has been a leader in developing the concept of joint-use for school buildings. Joint-use agreements enable school districts to engage other entities, often postsecondary institutions, in facility sharing partnerships. This is particularly valuable when the school and the other entity have similar facility needs but differing operational schedules and calendars. In fact, some states are now requiring school districts to pursue joint-use agreements prior to new school construction approval. California is such an example. The Education Code of California (§ 17070.90) requires school districts to provide certification of related attempts to pursue joint-use arrangements with other government agencies. According to Testa (2002), “this provision in the new program underscores the legal and prudent effort in order to seek ways to create school facilities that serve diverse members of communities” (p. 43).

Entering into joint-use agreements with other entities can also create conflict. Therefore, it is imperative that appropriate care and thought be given to such arrangements. Ringers (1977) provides guidelines for school districts to follow when developing the concept of joint use facilities, which includes a narrow description of allowable activities in school facilities, cost-sharing based on occupancy capacity and loads, and the establishment of resource management plans.

## Disposition of School District Property

State statutes provide school districts with authority to dispose of real or personal surplus property. An example of such authority can be found in North Carolina's General Statutes, which in part states,

When in the opinion of any local board of education the use of any building site or other real or personal property owned or held by the board is unnecessary or undesirable for public school purposes, the local board of education may dispose of such. (General Statutes, 160A, art. 12)

According to Castaldi (1994),

School enrollments are subject to many sociological and economic forces. There are periods of large increases in school enrollments in certain districts followed by periods of decline. Some communities mature while others age. Some are created and some wane. . . . School plant planners would be well advised to ask themselves the question, how could the proposed building be used if enrollment declines by 50 percent. (p. 163)

### *Other Pertinent Legal Considerations*

The law of agency can be traced back nearly 1,000 years when individuals were assigned the task of conducting business on behalf of their monasteries. This legal principle allows designees to enter contracts and purchase and sell goods and services with either the explicit or implied authority of the principal (Miles, 1997).

In a 1976 report by the Council of Educational Facilities Planners, the intricacies of closing schools permanently are addressed. The report indicates that closing a school often creates more problems than solutions. Moreover, the report highlights the potential uses of closed school buildings. For example, leasing closed school buildings to other government or quasi-government agencies is sometimes an attractive option.

Alabama statute provides school districts the authority to petition the State Superintendent and upon the approval of the Governor to sell school lands deeded to the state for

schools (School Code 1927, § 654; Code 1940, T. 52, §568.). The proceeds from the sale are paid by the State Superintendent to the local board of education, having held the land in trust (School Code 1927, §388; Code 1940, T. 52, §373.).

Smith (1983) describes the many challenges associated with how to properly dispose of school district property. Ensuring a proper appraisal values the property in the context of market conditions is critical. Moreover, the development of a sales agreement that provides for the appropriate transfer of property including any potential hazards and responsibility for managing environmental impact problems protects school districts from future claims.

In a report by the Comptroller General of the United States (1981), the problem of school closure, particularly in large districts where enrollment is declining, presents a unique opportunity for federal and state agencies. Many of these school buildings are still in reasonably good condition, and can be retrofitted to meet the needs of other governmental functions at a huge cost savings.

## CHAPTER III

### METHODOLOGY

#### Introduction

This study employed a qualitative research design to gain insight into legal issues relating to the acquisition, use, and disposition of school district property. According to Miles and Huberman (1994), a qualitative research approach allows researchers to conduct a holistic review of available data sources. They argue a holistic approach can facilitate the attainment of deeper understanding of the topic without being limited by a restrictive research design. Qualitative research does not always lend itself to a linear progression of study, but rather allows the researcher to adapt research approaches during the study as information is revealed. According to Stainback and Stainback (1988), analyzing information from a holistic perspective contextualizes the analyses of information and promotes a deeper understanding of the phenomenon or issue under investigation. This type of research often incorporates the use of naturalistic, ethnographic, field, anthropological, and observational investigative strategies (Jacob 1987).

A central component of the methodology used in this study involved identifying, classifying case law into sections and then clustering cases into subsections. The cases reviewed in this study were obtained from Westlaw (n.d.), located under the headnote of school district property key number 345 (schools). The cases were classified and clustered based on established criteria described in the data production section of this chapter. Then the process of analyzing the

cases ensued. This analysis process, in essence, functioned as a proxy for personal interviews with the courts holding jurisdiction over the cases being examined. In addition, this study encompassed a review and analysis of available secondary sources including professional journals, relevant books, and other pertinent materials.

### Research Questions

1. What statutory authority provides school districts the power to acquire, use, and dispose of school district property?
2. How have federal and state courts interpreted school districts' express authority to acquire, use, and dispose of school district property?
3. What trends have emerged from case law relating to the acquisition, use, and disposition of school district property?
4. What legal implications should school district leaders consider when acquiring, using, or disposing of school district property?

### Materials

The court cases analyzed in this study came from a variety of court jurisdictions. They include district courts, courts of appeal, state supreme courts, and federal courts. Because this study included a historical analysis of litigation pertaining to the acquisition, use, and disposition of school district property the cases analyzed also occurred over a significant span of time. The time span ranges from the 1800s to cases decided in 2009.

## Data Collection

Much of the research for this project took place on the campuses of Troy University, Auburn University in Montgomery, and Alabama State University. Each of the institutions listed are within a 60-mile radius from my home and place of employment. In addition, I used electronic media resources and internet search engines to locate secondary and tertiary data sources.

## Data Production

The purpose of the study was to synthesize data from a variety of sources pertaining to the acquisition, use, and disposition of school district property. The nature of qualitative research creates an opportunity for the data collection and analysis to be an iterative process where one piece of data builds on or leads to another finding or outcome (Wilson, 2007). Therefore, the data production included a multi-step process where information collected from historical documents (e.g., cases) and professional journals, including the *Education & Law Journal*, *West's Education Law Reporter*, *The Cumberland Law Review*, and *The Tulane Environmental Law Journal*, was reviewed and grouped to allow for the building of themes and coherence in the study.

The cases briefed in this study were collected from Westlaw. Westlaw, “a computerized legal-research service from Thomson West, contains the full text of . . . court decision from 1790 to the present” (encyclopedia.com, 2009, p. 1). This service provides access to thousands of databases of case law, statutes at the state and federal levels, and administrative regulations and codes. Topics in Westlaw are indexed by a key numbering system. Each key number represents a topic. The topics are listed in alphabetical order with a sequential key number associated to each.

Key numbers in Westlaw range from 1-414, beginning with key number 1 (Abandoned and Lost Property) and ending with key number 414 (Zoning and Planning) (Westlaw Quick Reference Guide, n.p.). This study addressed key number 345 (Schools).

This study involved the identification of court cases contained within key number 345 (Schools) specifically relating to the acquisition, use, and disposition of school district property. Cases under the aforementioned key number pertaining to a non-related topic were excluded. Additionally, cases pertaining to intellectual property, copyright, torts relating to injuries on school property, and crimes on school property were excluded from consideration in order to narrow the scope of this study.

Cases meeting the requirements set forth in the study were printed and grouped. Each case's headnotes were used to group the selected cases relating to acquisition, use, or disposition of school district property. Headnotes are short descriptions of the legal issue in a case as written by West attorney-editors. Each case may contain multiple headnotes to address different legal topics (Westlaw Research Fundamentals, 2009)

Statsky and Wernet (1995), in *Case Analysis and Fundamental of Legal Writing*, describe a procedure for conducting an analysis process relating to case briefs. The process includes extracting pertinent case information and organizing the resultant information by the following descriptors:

1. Citation--identifying the information that enables you to find a law or material about the law, in a library.
2. Key facts--a fact is essential to a court's holding. A fact that would have changed the holding if the fact had been different or had not been in the opinion.
3. Issue--a specific legal question that is ready for resolution.
4. Holding(s)--the answer to a legal issue in an opinion; the result of the court's application of one or more rules of law to the facts of the dispute.
5. Reasoning--the explanation for why a court reached a particular holding for a particular issue.
6. Disposition--the order of the court as a result of its holding. (p. 41)

The researcher used the aforementioned method to brief the cases selected. Formatting the court cases as described above allowed the researcher to organize the analysis in a manner that promotes understanding. This was accomplished by systematically classifying the cases based on numbers 2, 4, and 5.

### Data Analysis

The purpose of this study was to conduct a thorough analysis of relevant issues regarding the acquisition, use, and disposition of school district property. More than 80 cases were analyzed in this study to identify emergent patterns in facts, holdings, and courts' reasoning over time and across multiple court jurisdictions. This was done in order to develop a more in-depth understanding of the topic in this study. The cases were first categorized into one of three sections.

The first section is exclusive to litigation involving school districts' efforts to acquire property and to erect school facilities. The section that follows is a review and analysis of cases pertaining to the usage of school district property. The last section focuses on court cases concerning the appropriate disposal of school district property. Additionally, the sections are subdivided into case clusters which serve the purpose of isolating specific facts, holdings, and court reasoning which will provide the basis for the analysis in chapter IV and summary in chapter V.

By nature, qualitative research lends itself to criticism and claims of distorted validity (Miles & Huberman, 1994). Therefore, the researcher disclosed any perceived or known potential biases in advance of the study.

This study employed three qualitative research techniques. First, this study contextualized the research from a historical vantage point. Vincent (1911) claims “Historical research is the application of logic and common sense to the past affairs of humankind” (p. 5). This approach possibly added some assurances of objectivity to the study, because it could nullify any potential conflict from interviewer interview relationship bias. Furthermore, this approach could mitigate the potential skewing of the interview record, given that time and place are asynchronous (Miles & Huberman, 1996).

The case analyses were done in the aggregate and by topic. This provided the researcher with the opportunity to incorporate a hybrid research design to include the development of mini-case studies for each of three topics, which were the acquisition, use, and disposition of school district property.

Case studies are intensive examinations of the information source in context. There is no perfect way to conduct such a study, and any combination of strategies can be used (Trochim, 2000).

Finally, this study involved classifying and coding nearly 100 court cases involving school district property. The cases were classified by the following subtopics:

1. Acquisition of school district property
2. Use/Nonuse of school district property
3. Disposition of school district property

Aside from categorizing based on the issue classifications delineated above, the cases were clustered by subtopics and analyzed based on key facts, holdings, and court reasoning.

The aforementioned processes enabled the researcher to compare the data sources with one another and then to the research literature. Although the hybrid approach, herein described,

is unique to this study, the hybridization of multiple research techniques is not uncommon to qualitative research. According to Merriam and Simpson (1995),

the nature of qualitative research requires a style of research which is predicated on the assumption that reality is constructed by individuals in interaction with their social worlds. . . . Thus there are many “realities” rather than the one, observable, measurable reality. (p. 97)

The opinion among qualitative researchers seemingly converges on the precept that there is no single methodology or best approach to use or apply to all qualitative studies. Rather, Maxwell (2005) contends that one of the strengths of qualitative research is that it allows for the possibility, “Any component of the design may need to be reconsidered or modified during the study in response to new developments or to changes in some other component” (p. 2). Hammersley and Atkinson (1995) argue, “Research design should be a reflexive process operating through every stage of a project” (p. 24).

### Summary

School District administrators must be knowledgeable of potential legal issues arising from the acquisition, use, and disposition of school district property. Becoming familiar with the research, statutory law, and case law on this topic is a critical step toward developing such knowledge. This study is intended to identify points of convergence where research, statutory law, and case law align, and to identify practices that may prove perilous when managing this administrative function.

## CHAPTER IV

### DATA AND ANALYSIS

#### Introduction

This chapter includes a review of 84 court cases relating to school district property. The cases analyzed cover the acquisition, use, and disposition of school district property and are grouped accordingly. Each case examined provides pertinent information concerning key facts, the presiding court's findings, and rationale for such. The cases were first grouped based on topic.

All cases relating to the acquisition of school district property were analyzed first, individually and then collectively, to ascertain relevant legal issues and to make comparisons within the group established in the study. Next, cases relating to the proper use of school district property were analyzed. Then those cases pertaining to the disposition of school district property were grouped and like comparisons were conducted. Finally, a comparative analysis was performed across groups in order to identify potential similarities for all three groups. The case briefs that follow represent notes taken from cases in the study sample, and all references and citations therein relate back to the published opinion of the court.

#### Case Briefs Relating to the Acquisition of School District Property

The cases in this section concern litigation involving the acquisition of school district property. This section contains 25 court cases beginning with *Sheldon v. The Centre School District* (1856). The cases reviewed span multiple decades, court jurisdictions, and subtopics to

expose the emergence of themes and trends through time. The most recent case, *Litcher v. Wake County Board of Education* (2007), included in this section addresses the acquisition of school district property by means of leasing. The cases in this category were selected from *West's Education Law Digest* school district property category and key number 345 (schools). Moreover, the cases were limited to litigation specific to the acquisition and construction of school buildings and lands; the authority of public bodies to acquire such by way of purchase, lease, or condemnation; and, to cases where the authority of boards of education to use public funds for these kinds of acquisitions is called into question. This review purposely excludes litigation involving foreign courts or properties abroad and limits the scope of the review to public schools serving any combination of grades kindergarten through 12th.

Citation: *Thomas Greenbanks v. Henry Boutwell*, 43 Ct. 207, 1870 WL 4508 (Vt. 1870).

Key Facts: Thomas Greenbanks filed an action for replevin to recover four bales of flannel taken by Henry Boutwell. Boutwell claimed that he took the property while acting in the context of a collector for School District No. 4 in Stockbridge. The School District held several different meetings at which the issue of raising revenue was discussed. The district had to raise money by redirecting existing taxes or by levying tax increases to cover the costs of building a new schoolhouse and a related property purchase. Warnings about the individual meetings were posted throughout the community and ultimately it was decided by a vote at one such meeting that two separate school districts would be united into one.

Repeatedly signs were posted relating to the aforementioned meetings to include notice as to the purpose of said meetings, which was to raise money to pay for the expenses related to constructing, operating, and maintaining the school facilities. However, there was a hall constructed on the second floor of the building which was not constructed for the sole purpose of

necessity or use by the school. The voters approved a tax increase to help offset the indebtedness for the school. Thomas Greenbanks was a resident in the district; however, Mr. Greenbanks refused to pay the taxes assessed and as a result, Boutwell took the flannel. Boutwell did so while working as a collector for the school district. Greenbanks proceeded with an action to recover his property, claiming that he was not required to pay the assessed taxes as they were illegally imposed by the school district.

Issue: At issue was whether School District No.4 had authority to impose a tax upon citizens, and use the revenue for the construction of a schoolhouse and whether the tax itself was invalid or illegal.

Holding: The Court held that the taxes imposed to cover the costs of the school building were valid and that the school district's failure to follow guidelines as set forth by statute did not render the tax invalid.

Reasoning: Pursuant to Vermont General Statutes, Sections 43 and 44, the school district acted within its discretion by making a competent decision to adopt or construct a schoolhouse. Further, the statutes set out that the school district could hold a vote to seek approval to raise money through the imposition of taxes. The final meeting, when the voting took place to gain approval of the taxes, was called into question under statutory requirements relating to proper notification and posting of meeting times and dates. Greenbanks raised the issue that the notices, as set out by the district, did not fall within the timelines set out by statute. Consequently, §43 of the General Statutes set out that notices must be posted at least 7 days before, but not more than 12 days, the meeting. Here, the notices were posted 15 days prior to the meeting. Greenbanks argued that the meeting failed to comply with the statutes and that any such tax approved therein would be illegal and invalid.

The court held that the district's failure to state with specificity the hour of such meetings and failure to meet such finite statutory specifications did not have any final effect on the construction and maintenance of the schoolhouse. Further, the court reasoned that even if the tax were deemed invalid based on previous errors and omissions, the district could hold future meetings to vote on taxes needed to cover the costs of operation. There was no question as to the construction of, existence of, and ownership of the schoolhouse, which was under control of the school district. Thus, the court held the actions of the district to be lawful and that the construction of the facility and efforts to raise money for the same were within the authority of the school district.

Disposition: The Supreme Court of Vermont affirmed the judgment of the Windsor County Supreme Court.

Citation: *Foree v. School District No. 7. of Holt County*, 242 Neb.166, 493 N.W, 2d. 625 Ed. Law Rep. [1023] (Neb. 1993).

Key Facts: This is a case on appeal to the Supreme Court of Nebraska where the appellant, C. R. Foree, a resident and taxpayer in the School District of Holt County, brought a complaint against the school district in an attempt to prevent the acquisition of modular homes for the school district. The homes were planned to be used as classrooms. Moreover, the proposed acquisition of such involved a lease-purchase agreement. The appellant's complaint was dismissed in district court; thus he filed an appeal.

Legal Issue: Did the board of education have the authority to enter into a lease-purchase agreement without a vote of the electorate as delineated in Neb. Rev. St. §79-4,154?

Holding: The court affirmed the district court's finding in favor of the defendant school district.

Reasoning: The court reasoned the lease agreement to be valid, based on Neb. Rev. St. §79-4, 154, which was first adopted in 1971, then amended in 1985 to extend permitted lease periods from 5 to 7 years. Otherwise, the language of the aforementioned statute remained significantly unaltered. In short, the statute declares the governing board of any public school district has the authority to enter into lease agreements as may be deemed necessary so long as the agreement does not exceed the time period set in the statute. Additionally, the law permits agreements to be extended or refinanced as might be appropriate to benefit the electorate without regard to the entry date of such and in the absence of an election.

Citation: *George v. Board of Education*, 210 Neb. 127, 313 N.W. 2d 259 (1981).

Key Facts: Plaintiff, George, filed a lawsuit seeking to enjoin the Ord School District from ratifying a lease agreement with a “district created corporation” identified in the suit as *The Ord School District Building Corporation*. George alleged that such an agreement required a vote of the electorate. The lease was intended to allow said corporation to complete an addition to a school within the district and to receive remuneration for such in the form of lease payments. The proposed agreement would terminate at the end of 5 years. At the end of the lease term the corporation was to donate the addition to the school district. The district court ruled in favor of the defendant school district and the complainant appealed.

Issue: Should the school district be enjoined from entering into a lease agreement without a vote of the electorate?

Holding: The court determined the district had the authority to enter into a lease and affirmed the finding of the district court.

Reasoning: The court noted that the school district had not issued any bonds relating to the aforementioned agreement and that the creation of said corporation to accomplish the same

was permissible even if the corporation issued bonds to finance the construction of improvements for the school district. In fact, the court found that the legislature specifically authorized such actions in order for school systems to improve and acquire properties and facilities.

Citation: *Litcher v. Wake County Board of Education*, 182 N.C. App. 241, 641 S.E.2d 824,217 Ed Law Rep. 739 (2007).

Key Facts: Jade John Litcher, plaintiff, brought suit against the Wake County Board of Education seeking injunctive relief in order to prevent the board from constructing a modular elementary school on a parcel of land leased from a third party. The superior court dismissed based on the doctrine of laches. This notwithstanding, the plaintiff continued to seek relief based on the notion that the related lease was executed in violation of N.C. Gen. Stat. § 115C-521(d)(2005), which holds school districts are unable to contract for the construction of school facilities on lands wherein the property is not owned by the local board of education. The complainant postulated the statute thereby rendered any related lease agreement null, void, and illegal, thereby promulgating the need for a permanent injunction to prevent further expenditures of taxes on such activities. The Board filed a motion to dismiss in July of 2005, which came before the Court of Appeals of North Carolina in 2007.

Issue: Does the Board's actions necessitate cause for injunctive relief and does state statute preclude boards of education from leasing property for like purposes?

Holding: The court found that the plaintiff's argument was moot given that the modular school was near completion. Furthermore, it held that the state statute does not preclude a school district from leasing property, but rather prohibits the erection of school buildings on such properties, which was not a matter being litigated by the court at present.

Reasoning: The court concluded that it would not be proper to restrain, via a permanent injunction or writ of mandamus, that which has already been substantially finished. Moreover, the court found that the plaintiff failed to provide a reasonable argument based on statutory law or case precedence which would support the supposition that the district lacked authority to lease property. Furthermore, the lease presented by the plaintiff was absent any language requiring or preventing the Board from engaging in conduct violating state statute in regard to erecting buildings. As a result of the plaintiff's failure to provide evidence warranting relief, the case was summarily dismissed.

Citation: *Kramer v. Board of Education, City School District of Olean*, 40 A.D.2d 946, 339 N.Y.S. 2d 243, (1972).

Key Facts: This case comes on appeal after the lower court denied requested relief to petitioner, Kramer. The petitioner sought to have the court enjoin the board of education from purchasing real property within the school district. Albeit that the board had demonstrated through its action that the property was needed for educational purposes and was in receipt of required approval from the city planning commission. CPLR 7801 et, seq.: Education Law §§ 2511 and 2512 subds. 2(6) provide authority to boards of education to purchase real property when they serve a community with less than 125,000 inhabitants. The school district met the aforementioned criteria making the same applicable to the matter before the court.

Issue: Did the Board of Education have the authority to purchase property and were their actions without arbitrary or capricious conduct?

Holding: The school district acted within the scope of its authority as provided by statute. The lower court's ruling was affirmed.

Reasoning: The court cited Sections 2511 and 2512 of the Education Law pertinent to this case. The law expressly provides school districts with the authority and discretion to purchase real property as may be deemed necessary for the successful operation of its schools. Furthermore, the court established its unwillingness to intercede in matters where the judgment of the Board was not proven to be arbitrary or capricious. While the court conceded that an argument might be made that the Board's decision was not wise or popular among the electorate, the court reasoned it would be meritless to impose the will of the court or a segment of the populace on the Board. The judgment was unanimously affirmed in favor of the Board of Education.

Citation: *Emmons v. Board of Education of Lewis County*, 260 Ky. 17, 83 S.W.2d 848 (Ky. App. 1935).

Key Facts: Following the destruction of the high school building due to fire, the County Board of Education proposed the conveyance of the lot and certain other parcels to a nonstock corporation or holding company, which would issue bonds to make the improvements. The conveyance was to be made on the condition that the school board is allowed to lease the property and pay annual rent. Once the bonds had been paid in full, the school board was to once again take title and ownership in the property as reconveyed by the holding corporation. A citizen filed suit seeking an injunction prohibiting the board from entering into the proposed agreements.

Issue: At issue was whether the school board violated any set legal limitations by proposing the plan and related indebtedness.

Holding: The court held that the state statute conveys upon the board of education the power to borrow money for purposes of supporting the school systems.

Reasoning: The court held that the facts of this case warranted a determination as made in similar cases; therefore, the school board had the right and option to incur indebtedness. Further, the proposed plan did not violate any constitutional limitations on the powers of the board. The court further agreed that it could not control the discretion of the school board in bargaining and masking such terms that suit the needs and as such are not unlawful.

Disposition: The Lewis County Circuit court dismissed the action based upon the plaintiff's failure to plead. The Kentucky Court of Appeals affirmed the lower court's judgment of dismissal.

Citation: *Board of Education of Nashua v. Vagge*, 102 N.H. 457, 159 A.2d 158 (N.H. 1960).

Key Facts: In 1957, the school board of Nashua voted to build a new junior high school. The site designated was known as the town "Fairgrounds." In 1958, the board of aldermen voted to transfer a portion of the fairgrounds to the city parks and recreation department and the remaining portion to the board of education. A total of eight acres of land was to be placed under the control of the board of education. The resolution regarding this transfer was passed at both the second and third readings at meetings. The resolution was ultimately passed by the board of alderman in 1959. Three days later, the city's mayor vetoed the resolution and the board denied a motion to reconsider the transfer. The school board proceeded with filing a petition for writ of mandamus against the mayor and the board of aldermen of the city of Nashua.

Issue: At issue was whether the board of education had the power to select property to be designated for school use and whether the board of education had the power to compel the board of aldermen to convey such property.

Holding: The Court held that the board of education could not compel the transfer or conveyance of land from the city council.

Reasoning: The court established that a board of education does have the power to choose, select, and designate property for use of school purposes; however, the board of education could not by mandamus, compel the city to transfer land for such purpose. There was no dispute that the school board was given statutory granted authority to select and purchase land for schoolhouse lots or construction. However, the statute also requires that the selection and purchase of land by the board of education is subject to the powers of appropriation granted to both the mayor and the board of aldermen (*Wilcox v. Burnham*, 1953, 98 N.H. 64, 67).

The court recognized the independence of the board of education and its creation as a separate municipal entity from the city and mayoral board. However, the extent to which school administration is subject to control by the mayor and the board of aldermen is determined by the general statutes and the charter provisions in each city (*Toussaint v. Fogarty*, 1802, 80 N.H. 286, 116 A. 636). In this case, the board of education lacked authority to compel the transfer of the land.

Disposition: The Supreme Court of New Hampshire heard arguments in this case and held that the petition for mandamus was due to be and was dismissed.

Citation: *McKinnon County Superintendent of Education v. Gowan Bros.*, 127 Miss. 545, 90 So. 243 (1922).

Key Facts: Upon acquiring a parcel of land, school authorities established an agricultural high school and erected a dormitory as part of the school. The top floor remained unfinished so a contractor was hired to both finish the top story and build an additional dormitory. The county refused to pay Gowan Brothers for the work and materials related to the project. Gowan Brothers

filed suit to enforce a mechanic's lien and materialman's lien against the buildings they had repaired and constructed.

Issue: At issue was whether a material's or mechanic's lien could be enforced against property that was part of a school and belonged to the county.

Holding: The court held that the dormitory building, being property of the county, was not subject to sale to satisfy a mechanic's or materialman's lien or claim.

Reasoning: The court found that the property at issue was taken in the name of the trustees of the school, thereby being a conveyance to the county. The building first erected on the land was paid for out of funds donated in consideration of the school's location. When there is no fund created by trustees of a school set up to pay such demands, the buildings, being the property of the county, are not subject to satisfy claims of a mechanic or materialman (18 R.C.L. pp. 881, 882, and *U.S. Fidelity & Guaranty Co. v. Marathon Lumber Co.*, 119 Miss. 802, 81 South. 492; *Panola County v. Gillen*, 59 Miss. 198). Thus, the court held that the buildings were not subject to sale for satisfaction of the Gowan Brothers' liens and the law will not subject the building to the payment of the claim.

Disposition: The court reversed the judgment of the circuit court and dismissed the action.

Citation: *Ephrata Area School District v. County of Lancaster*, 886 A. 2d 1169, 204 Law Rep. 323 (Pa.Comwlth. 2005).

Key Facts: In 2000, the Ephrata Area School District purchased a large tract of land consisting of approximately 80 acres for the purpose of constructing a new elementary school. As the board of education made preparations for the development of the site, they also purchased a 50 foot strip of land, of which 2.3 acres of the land were from private owners, with the intent of

using it to develop an entry drive to the new school. A 50 foot open-space easement was extracted from said purchase because another county agency was already in possession of such. The other agency agreed to transfer the open space easement to the school district and simultaneously approved a right-of-way across said property for the new school.

The school board, albeit uncertain about the necessity of acquiring such, requested for the county commission to approve the transfer of the open-space easement and for the development of a right-of-way across the newly acquired 50 foot strip of land. The county commission rejected both requests. Some months afterward, the school district filed for declaratory judgment proffering the county commission's approval was not a necessity for the board of education to locate an entry drive through said property.

Legal Issue: Was approval from the county commission required for the school district to gain right-of-way utilizing an open-space easement?

Holding: The trial court granted summary judgment for the County in lieu of the school district. However, the appellate court found the lower court erred and reversed judgment.

Reasoning: The court determined pursuant to The Open Space Lands Act P.L. (1967) 992, as amended, 32 P.S. §§ 5022(a) it was necessary for the school district to obtain approval from the county commission. Moreover, in light of the said commission's declination of such request, the court was obliged to grant summary judgment for the defendant. As a result, the school system appealed. In considering the merits of the appeal the court considered the type of easement sought and found it necessary to answer four questions relating to the easement in the affirmative. The court found the following truths: (1) the open-space easement to the board of education was an easement in gross, (2) the open-space easement was a negative easement, (3) the open-space easement in this case was a non-exclusionary easement, and (4) approval for a

right-of-way was not a requirement of the applicable laws and regulations of the state. Therefore the court reasoned the trial court was mistaken and the ruling had to be reversed.

Citation: *Howard Jarvis Taxpayers Association v. Whittier Union High School District*, 15 Cal. App. 4th 730 (Cal.App. 1993).

Key Facts: The respondent school district owned and operated 19 schools serving the area within their boundaries. The facilities at these grounds included auditoriums, meeting rooms, gyms, stadiums, tracks, playing fields, courts, and swimming pools. The foregoing facilities also served as recreation and civic centers for residents of the school districts. As a result of the heavy community use, many of the facilities were deteriorated and in need of repair. Lacking sufficient funds to finance the needed improvements, the school districts initiated proceedings to form special assessment districts under the Landscaping and Lighting Act of 1972, “The Act.” The Taxpayers Association challenged the school district’s special assessments and the trial court entered summary judgment in favor of the school districts, and the Taxpayers Association appealed.

Issue: May school districts qualify as “special districts” within the meaning of the Landscaping and Lighting Act of 1972, State & Highway Code §22500, et seq.?

Holding: “The Act” does not limit its application to cities or counties, but extends to encompass “special districts” as well. Although the meaning of “special districts” is not discussed in the legislative history of “the Act,” the Court held that the definition set forth in §22530 of the Streets and Highway Code is certainly broad enough to encompass school districts. As such, school districts qualify as “special districts” under the Landscaping and Lighting Act. The judgment of the trial court was affirmed.

Reasoning: The Court stated that the purpose of “the Act” was to prescribe the procedures for the formation of special assessments to fund the installation, construction, maintenance, and acquisition of specified improvements. “The Act” states that assessment districts may be formed by local agencies, which are defined to include the following:

a county, a city and county, a city, a special district or an agency or entity created pursuant to Article 1 of Chapter 5 of Division 7 of Title 1 of the Government Code and made up solely of local agencies whose annual taxes are carried on the County assessment roll and are collected by the county (State and Highway Code, §22530). Special district means any public corporation, other than a county or city, formed pursuant to general law or special act for the local performance of governmental or proprietary functions within limited boundaries and which is authorized by such law or act to make any of the improvements or to furnish the maintenance or services provided for in this part. (State and Highway Code, §22530)

The Court cited *Ward v. San Diego School District* (1928):

It has long been recognized that school districts represent a type of non-municipal public corporation which derives its authority directly from the Legislature, through the general law providing for the establishment of schools throughout the state, and performs its services locally within a limited geographic area. (p. 821)

The Court then looked to the California State Education Code in order to determine whether or not school districts were authorized to make the types of improvements and to furnish the maintenance and servicing provided for in “the Act,” and determined that the broad statutory powers vested in school boards by the Legislature did include said authorizations. As such, school districts can qualify as a “special district” under “the Act.”

Citation: *Smith v. City Board of Education of Birmingham*, 272 Ala. 227, 130 So. 2d 29, (Ala.1961).

Key Facts: A group of taxpayers filed a law suit in an attempt to prevent the Birmingham City Board of Education from condemning a parcel of land in order to build a central office complex to house the superintendent of schools and other staff members. The board of education filed a motion seeking dismissal of the complaint with the presiding court. The Circuit Court of

Jefferson County granted the motion and the case was dismissed. The complainants appealed the Circuit Court's finding to The Alabama Supreme Court. The Supreme Court found that the Circuit Court's finding was appropriate and affirmed its judgment.

Issue: Does a local board of education in Alabama have the statutory authority to condemn land in order to build a central office complex for the superintendent of schools and others? Secondly, in this particular case, should the BOE be prevented from proceeding to prevent an abuse of their authority?

When lands or any interest therein shall be deemed by the board of education necessary for the site of a schoolhouse or for enlarging a schoolhouse lot, or for playgrounds, or other public school purpose, and the board of education for any reason shall be unable to contract with the owner or owners for the title thereof the said board of education may institute condemnation proceedings to acquire such lands or the interest therein. Said condemnation proceedings shall be in all respects conducted and regulated as provided by Chapter 1 of Title 19. This section gives the board authority to condemn for specific purposes and then says or other public school purposes. (Rule: Title 52, Sec. 168, 1940)

Section 153, Title 52, Code of Alabama (1940) specifically requires boards of education to furnish the superintendent of schools and his staff, with suitable office space equipped with items necessary to perform the functions of the office.

Holding: The trial court's holding was affirmed. The lawsuit was set aside.

Reasoning: The court referred to Section 153, Title 52, Code of Alabama (1940), which establishes the requirement for a board of education to supply the superintendent of schools and other staff members with adequate office space. Moreover, the court reasoned that the legislature would not have established such a requirement without also providing the requisite authority to carry out the intent of the law. More specifically, after reviewing the statute, the court concluded that the necessary authority was intended by the Legislature to be encompassed in the "catch all phrase" of "other public school purpose," found in Section 168, Title 52, in the Code of Alabama (1940). The Court further held that the matter of locating, constructing, and maintaining

buildings for public school purposes was not a function of the courts, and when the board performs these functions free from fraud and corruption, a court will not review the board's actions. In the case at hand, no evidence of fraud and/or corruption was presented, and the judgment of the trial court was affirmed.

Citation: *Board of Education of Blount County v. C. B. Phillips*, 89 So. 2d 96 (Ala.1956).

Key Facts: This case was brought on appeal from a judgment overruling the Board of Education of Blount County's Motion to Dismiss the Superintendent of Blount County Board of Education and 36 taxpayers' complaints asking that the Board be enjoined from building a new high school at Appalachian in Blount County. In their complaint, the plaintiffs allege a "laundry list" of reasons stating why it would be unwise to build a new high school in Appalachian. The complaint further alleged that upon the unanimous request of the Board members, and contrary to his better judgment, the State Superintendent of Education authorized the school at Appalachian.

Issue: Can the court substitute their judgment for that of the County Board of Education when they deem the Board's actions to be unwise, and thus enjoin the Board from carrying out the quasi-judicial or administrative duties vested in them by the Legislature?

Rule: The Court applied reasoning from *Hodges v. Board of Education of Geneva County* that the courts of this state will not ordinarily seek to control the exercise of the broad discretion given by the statutes to the County Board of Education since the powers vested in it are quasi-judicial as well as administrative. This principle prevails even though in the exercise of discretion, there may have been error or bad judgment. The courts will act, however, if the acts of county boards of education are tainted with fraud or bad faith or gross abuse at discretion (*Hodges v. Board of Education of Geneva County*, 245 Ala. 64 16 So. 2d 97).

Holding: Here the court reversed the trial court's holding, ruling that the complaint in question failed to state a claim upon which relief can be granted.

Reasoning: The court applied the rule set out in *Hughes v. Board of Education of Geneva County* and concluded that although it appeared the Board may have made an unwise decision in determining that a new school was needed, the Board was operating under the broad discretion provided to it by the law in the State of Alabama. The Court generally defined "gross abuse of discretion" as such an arbitrary and unreasonable act or conclusion as to shock the sense of justice and indicate lack of fair and careful consideration. The Court further reasoned that there were no facts alleged to indicate that the board was motivated by any consideration other than the public interest, or that it failed to consider all the arguments which the Complainants urged against the proposed action. Each argument contained in the Complaint was subject to a difference of opinion and there was nothing more alleged in the Complaint that the County Board of Education did anything more than adopt a solution which, in their judgment, was proper.

Citation: *Johnson v. City of Sheffield*, 236 Ala. 411 (Ala.1938).

Key Facts: The Plaintiff brought this suit against the City of Sheffield, the City Board of Commissioners, and others, seeking to enjoin an election call by the Board for the authorization to issue and sell municipal bonds to provide funds for the construction of a school building, the purchase of lands, and for making improvements to existing buildings. The complainant also asked the court to rule on the validity of the ordinance calling for the election, and providing for the issuance of bonds. The evidence presented confirmed that the Board deemed it necessary to build a new school, and to refurbish the existing buildings. The city was without the funds to complete said construction. The city proposed to secure a loan by the issuance and sale to the

Federal Emergency Administration of \$104,000 of the city's general obligation bonds, the payment of said bonds to be secured by the pledge of an ad valorem tax of one-half of one per centum on the property situated in the city, and also by the pledge of the city's license taxes.

Issue: Is the city authorized to make a valid and binding pledge to the payment of said proposed bonds of said ad valorem tax of one-half per centum, and is the city authorized to make a valid and binding pledge of its license taxes to the payment of the principal of, and interest on, said proposed bonds?

Holding: There is nothing in the ordinance per se, calling the election, and the proposed pledging of the taxes, ad valorem and license, which would stamp the ordinance as being illegal or inconsistent with any provisions of the municipal charter, or any law of the State. However, into this ordinance, and into the contract pledging the taxes, must read the law-imposed limitation that, if necessary, out of this revenue arriving from said taxes, the necessary and legitimate governmental expenses in operating the municipality must be first paid.

Reasoning: A municipal corporation can exercise only those powers granted in express terms, those necessarily implied thereon or incident to those expressly conferred, and those indispensably necessary to the accomplishment of the declared objects and purposes of the municipality (*New Decatur v. Berry*, 1890, 90 Ala. 432).

And, by express statutory grant municipalities in this State have full and continuing power and authority to issue and sell bonds for the purpose of constructing, reconstructing, enlarging or extending public buildings and public schoolhouses, and to acquire the necessary land for the site for any building or improvement to be used for public purposes (General Acts, 1935, p. 575, §2). The Court further held that the taxing power is conferred on municipal corporations for the purpose of providing means with which to meet their expenses incurred in

the performance of the duties resting on them as governmental agencies (*Allen v. Intendant and Councilmen of Lafayette*, 1890, 89 Ala. 641).

By applying the foregoing law to the facts at hand, the Court concluded that the city was operating within the powers afforded to them by the laws of this State and of their charter. The lower Court's ruling was affirmed.

Citation: *Vaughan v. McCartney*, 217 Ala. 103 (Ala.1927).

Key Facts: The County Board of Education passed a resolution to divide the county into 18 school tax districts, and requested the County Commission to order a special tax levy in several districts. Bellwood, District 7, had the tax passed and the Board of Education began plans to erect a new school in that district. Initially, the Board selected 5 acres for the building at Aetna. That deed was executed to the State and recorded for that purpose and pursuant to an understanding with the local trustees and with their consent obtained to the establishment of the tax district with the understanding that the building was to be placed at the Aetna site. The Board subsequently changed the site for the school to a location 8/10 of a mile away in Bellwood.

Issue: Can the County Board of Education, having once entered upon its Minutes selection of a new site for a school at Aetna, reconsider its previous ruling and change the location to Bellwood, in the same district?

Holding: It was within the broad powers granted to the Board to abandon the first selected site and designate another and, no fraud or abuse of discretion appearing, their action cannot be disturbed. The order of the Chancellor denying relief was affirmed.

Reasoning: By statute, the School Board is given very broad powers of executive, legislative, and judicial character. In the selection of a school building site, the Board has broad discretion, and, in absence of fraud, corruption, or an abuse of discretion, the Courts will not

interfere, and thus substitute their judgment for that of the Board (*Board of Revenue v. Merrill*, 1915, 193 Ala. 521).

In the present case, there was no evidence of fraud, or abuse of discretion presented at trial. The Court reasoned that the Board's decision to change locations was made in what they deemed to be for the public benefit, and not by improper motive. As such, the Board's decision cannot be disturbed.

Citation: *Clayton v. School Board of Volusia County*, 667 So.2d 942, 107 Ed. Law Rep. 410 (Fla.App.1996).

Key Facts: The Plaintiff brought this case on appeal after the circuit court quashed the complaint. James Clayton, a taxpayer in Volusia County, sought to enjoin the School Board of Volusia County from settling an eminent domain case by paying twice the appraised value of the property in dispute. Secondly, the original complaint alleged that the Board of Education summarily abused its authority by proceeding with said purchase despite the fact that it exceeded a statutorily established limit. The plaintiff argued that the board was legally compelled to obtain as established by F.S.A. §235.054 (1) (b).

Issue: Could the Board of Education set aside eminent domain proceedings and did it circumvent Florida State Law by exceeding its purchasing authority without an extraordinary vote.

Holding: The lower court found the plaintiff had no standing in the matter and found in favor of the school district. On appeal, the district court of appeals reversed and remanded.

Reasoning: The court considered the merits of the plaintiff's standing by reviewing the holding in *Notch Broward Hospital District v. Fornes* 476 So 2nd 154 (Fla. 1985). It addressed the issue of taxpayer standing restrictively. In short, the court concluded that the precedent

established by the *Fornes*'s rule was resultant of a misinterpretation of a previous ruling in *Henry L. Doherty & Co. v. Whitehurst, et al.*, 73 Fla.152, 74 So.2d 205. Therefore, it set aside Fornes' rule in determining whether the complainant in the present case has standing and concluded he did. Secondly, the court considered whether the board had the requisite authority to begin eminent domain proceedings, and to settle such prior to a fair market value being established. The court referred to West's F.S.A. § 235.054(1) (B) and determined such action is authorized so long as the price of the settlement does not exceed the statutorily imposed \$500,000 limit. Furthermore, it reasoned that when such a settlement is reached the eminent domain proceeding becomes a negotiated purchase invoking all the mandates established in section 235. 054 (1) (b) to include an extraordinary vote.

Disposition: The court reversed the trial court's finding and remanded it for further action consistent with the court's determination.

Citation: *Neis v. Board of Education of Randolph School District*, 128 Wis.2d 309, 381 N.W.2d 614 Ed. Law Rep. 557 (1985).

Key Facts: In 1976, electors in the Randolph School District provided the Board of Education with permission to purchase a parcel of land consisting of 24 acres for the purpose of constructing a new elementary school. The Board moved forward with the purchase of said land. However, ultimately it determined to build the new school on an alternate site. Notwithstanding, the Board moved forward with the acquisition of the 24 acres.

Upon learning of the Board's intent to not construct a new school on the 24 acres, the property owners refused to convey the property. The Board filed suit to compel the performance of the sale and the school district prevailed in district and later appellate court.

Subsequently the property owners, Edwin and Jessie Smedema, brought a taxpayer action with Otto Loest in an attempt to enjoin the Board from spending public funds for the aforementioned acquisition. This action was dismissed as well at the trial and appellate court levels. The appellate court determined that Loest lacked standing as a taxpayer in said district. Still later, in 1984, a third party petitioned the court to enjoin the Board from purchasing the 24 acres alleging the Board lacked proper authority to expend public money on property for an undesignated purpose.

Issue: Can the school board purchase property for an undesignated purpose?

Holding: The court held that the law authorizes school districts to purchase property for two express designated purposes. Therefore, it precludes any expenditure of public funds for undesignated purposes.

Reasoning: The Board reasoned that the grant or denial of injunctive relief lies within the authority provided to the trial court. It referred to *Mercury Records v. Economic Consultants*, 91 Wis. 2d 482, 500, 283 N.W. 2d 613 622 (Ct. app. 1979) to establish such discretion. Furthermore, the court made note of the fact that both parties stipulated to the material facts of the case. This left but the interpretation of W.S.A. 120.001 et seq., 120.10, and 120.10(6) at issue. To answer the question the court relied on a standard established in the doctrine of *expressio unius est exclusio alterius* “A canon of construction holding to express or include one things implies the exclusion of another (Garner, 1996, p. 271)” thereby precluding the provision of authority not specifically provided for in statute. Thus the court reasoned the applicable statutes prohibit the Board from purchasing said land without a designated purpose as defined in Sections 120.10(5) and (6). Stats. (1975).

Citation: *Denny et al. v. Mecklenburg County et al.* 211 N.C. 558, 191 S.E. 26 (N.C. 1937).

Key Facts: Petitioner, Denny, filed a civil action lawsuit in an attempt to prevent the Board of Commissioners of Mecklenburg County from issuing bonds to provide financing for the construction of teacherages in said county. The evidence provided substantiated that the question was put before the electorate in a proper fashion and that a majority of the votes cast supported such action. The Petitioner filed for injunctive relief on the precept that the Board of Education exceeded its authority in proposing expenditures for this purpose making the election moot. The trial court concurred with the plaintiff's contention and entered an adverse judgment against the defendant school district. The district appealed to the Supreme Court of North Carolina.

Legal Issue: Does the County Finance Act (Michie's Code 1935 § 1334(8) et seq.) provide authority to the Board of Education to erect teacherages?

Holding: The trial court determined that the Board exceeded its authority and held that teacherages failed to meet the definition of a schoolhouse. The Supreme Court of North Carolina affirmed.

Reasoning: The Court opined that the County of Mecklenburg had no authority to expend public dollars to construct teacherages. Furthermore they reasoned to include teacherages within the definition of said act would be to go farther than the General Assembly had gone. The Court cites *Hansen v. Lee* (1908), and states, "They do not, either expressly or by reasonable implication, grant any power or authority to school districts or to their board of directors, to erect dwellings for the use of school teachers."

Disposition: Judgment of the trial court affirmed.

Citation: *Sheldon and others v. The Centre School District*, 25 Conn. 224 (1856).

Key Facts: The Centre School District, in a legal meeting, passed unanimously a vote to build a schoolhouse with two rooms on the lower floor, with a space in between, and a hall overhead to be used as an area to host school functions and various other meetings and exhibitions. At a subsequent meeting, the district passed a vote to levy and collect a tax of 75 cents on the dollar to defray the expenses of building the school. Upon the completion of the school, various taxpayers from the district brought this action seeking an injunction against the collection of the tax alleging that said tax was an illegal expenditure involving an extravagant and improper outlay of money.

Issue: Were the district's actions in building a somewhat extravagant school and levying a tax to defray the cost of said construction illegal?

Holding: The actions of the district were not an unwarrantable abuse of discretion, and as such were proper and should not be interfered with by the courts.

Reasoning: The Court found that the district did have the statutory authority to construct a school, supply the same with furniture, and to levy taxes for such purpose. The power to determine what type of schoolhouse to build and which accommodations were needed by schools of the district and to determine the amount of funds that should be raised to defray the necessary expenses was vested in the inhabitants of the district. The Court determined that although it was unusual for districts to have separate halls for meeting purposes and school exhibitions, the hall would be convenient for such purposes. The convenience the hall afforded the district was a legitimate reason for which the provision might be made, and "school districts ought not to be so restricted as to prevent improvements in schoolhouses, and that much must be left to the inhabitants of the district in determining what conveniences shall be provided for schools."

Because the district acted in accordance with the statutory authority afforded to them, and because there was no evidence presented showing an abuse of discretion on the part of the school district, the Court opined that there was no reason to interfere with the district's exercise of power given to them by the Legislature.

Citation: *Bell v. Board of Ed. of Shelby County*, 308 Ky. 848, 215 S.W.2d 1007 (Ky. 1948).

The Board made a proposal for the building of a new central high school. There were eight high schools being operated in Shelby County at the time of the action; however, due to several of the schools not having the minimum number of pupils as required by the State Department of Education, the Board sought a plan of school consolidation. This was done in an effort to avoid loss of an accreditation rating. The Board sought to help finance the building through the issuance of revenue bonds totaling \$650,000.00. The citizens and taxpayers of Shelby County opposed to the proposal filed suit to enjoin the action. They alleged that the Board had abused the discretionary powers afforded them by law. Subsequently, the Board filed a mandamus suit against the Shelby County Fiscal Court seeking to make them adopt proper resolutions and orders to carry out the construction and financial plans. The two suits were consolidated and the Chancellor decided in favor of the Board. An appeal followed.

Issue: The issue was whether or not the Board obtained the required approval of proper authorities in proceeding and whether the actions of the Board constituted an abuse of its discretionary powers.

Holding: The Court held that the Board had not only abused its discretion but had also failed to obtain the required approval from the proper authorities.

Reasoning: The Board had proposed the building of a new school without first looking at possibly consolidating two or three existing high schools. Further, the court record did not offer any evidence that the new school building and financial support plans were submitted to the State Board of Education for consideration and approval, as needed. The court expresses its desire to see improvement of school facilities throughout the state; however, the proposal of the Board in this case would imperil the entire school system of the county. In addition, the plan was an expensive undertaking that could not be proven fiscally sound. The court expressed its duty to intervene to protect citizens, taxpayers, and the school system as a whole when threatened by unjustifiable actions.

Under the Ky. Rev. Stat. Ann. § 156.070, The State Board of Education was granted the management and control of common schools, public higher education, vocational education, and vocational rehabilitation as well as the Kentucky School for the Blind. The court notes that the Legislature's broad language of the statute places complete control of the common school system in the State Board of Education. However, a court of equity may enjoin a county board of education when its actions, as based upon the facts, prove to be arbitrary and constitute an abuse of the board's broad discretionary powers. The court found the Board's abuse of its discretion was unjustifiable and the Board was not permitted to move forward with the plan.

Disposition: The court reversed the judgment of the Circuit Court of Shelby County for entry of order consistent with the court's opinion.

Citation: *Emmons v. Board of Education of Lewis County*, 260 Ky. 17, 83 S.W.2d 848 (Ky. App 1935).

Key Facts: Following the destruction of the high school building due to fire, the county board of education proposed the conveyance of the lot and certain other parcels to a nonstock

corporation or holding company, which would issue bonds to make the improvements. The conveyance was to be made on the condition that the school board is allowed to lease the property and pay annual rent. Once the bonds had been paid in full, the school board was to once again take title and ownership in the property as reconveyed by the holding corporation. A citizen filed suit seeking an injunction prohibiting the board from entering into the proposed agreements.

Issue: At issue was whether the school board violated any set legal limitations by proposing the plan and related indebtedness.

Holding: The court held that the state statute conveys upon the board of education the power to borrow money for purposes of supporting the school systems.

Reasoning: The court held that the facts of this case warranted a determination as made in similar cases; therefore, the school board had the right and option to incur indebtedness. Further, the proposed plan did not violate any constitutional limitations on the powers of the board. The court further agreed that it could not control the discretion of the school board in bargaining and masking such terms that suit the needs and as such are not unlawful.

Disposition: The Lewis County Circuit court dismissed the action based upon the plaintiff's failure to plead. The Kentucky Court of Appeals affirmed the lower court's judgment of dismissal.

Citation: *Justice v. Clemons*, 308 Ky. 820, S.W.2d 992 (Ky. 1948).

Key Facts: The Warren County Board of Education had selected and proposed a site for the new high school. The proposed location was just outside the city limits and near the point of convergence of three major roadways. Throughout the process, the board involved the State Superintendent of Public Instruction, taking him to the site, and communicating related

information. The opponents of the proposed construction filed a petition seeking to enjoin the construction, based upon the Board's abuse of its authority and discretion by selecting the location.

Issue: At issue was whether the board of education exceeded its authority upon selecting the site in question and whether actions to move forward could be judicially enjoined.

Holding: The court held the board of education had not exceeded its authority or acted arbitrarily and that it was not the court's function to investigate the committees upon whom broad discretion had been granted by law.

Reasoning: The court had studied the court record and become familiar with the proposed area, surrounding roadways, and community. The court recognized and supported the statutory authority vested in the school board under Kan. Stat. Ann. § 160.160 and 160.290, which stated in part that a county board held broad discretion in the establishment of schools and selecting a building site was a matter for their exercise of "*unfettered good judgment.*"

In one previous case, the board had been held to have abused its discretion by selecting a building site for a new school (*Phelps et al. v. Witt et al.*, 1947, 304 Ky. 473, 201 S.W.2d. 4). However, the court reached its earlier decision based upon the fact that the board had failed to gain required site approval from the State Superintendent of Public Information. The board had already gained approval from the State Superintendent of Public Information for the site at issue, which weakened the claims made by the petitioners.

Once approval from the State Superintendent of Public Instruction is obtained, the courts will not interfere unless there is positive proof of fraud, collusion, or clear abuse of discretion. The courts are not set up to police or investigate the committees and boards; rather, the function of the elected members is to serve the public under supervision of state educational authorities.

The board was within its discretionary authority and the court lacked cause to enjoin the proposal at issue.

Disposition: The Court of Appeals of Kentucky affirmed the judgment of the Warren County Circuit Court.

Citation: *Richards v. Planning and Zoning Commission of Town of Wilton*, 170 Conn. 318, (Conn. 1976).

Key Facts: The board of education applied for a special permit seeking to use one of two specific sites for a school bus facility, which would include the storage, fueling, and related maintenance of the buses. The Wilton planning and zoning commission approved the application. The landowners of adjoining properties appealed the permit approval on the grounds that the school board lacked ownership or interest in the property and did not qualify as a proper applicant. Further, the landowners alleged that the application was one for municipal use for which the board lacked authority to apply. They also argued that the proposed use was a municipal use and that the board's interest in property owned by the town was limited to only property for school use. The Court of Common Pleas entered judgment for the landowners and the board of education appealed.

Issue: At issue was whether the Wilton Board of Education held sufficient interest in the property to apply for the special permit, regardless of who held legal title to the premises.

Holding: The Supreme Court of Connecticut found the school board to have sufficient interest in the property to qualify as a proper applicant.

Reasoning: The application for the permit, as submitted by the board of education, was done in furtherance of constructing and maintaining a bus facility. Further, the buses housed therein would be used to provide transportation for students in the public school system. In

*Canzonetti v. New Britain* (1960), the court held that the board of education has substantial powers over property committed to school purposes; that includes the care, maintenance, and operation of related buildings, and apparatus used for school purposes.

In this instance, the board held an interest in the property and purpose for which the permit was sought. Further, the court highlighted the fact that the Wilton zoning regulations did not require an applicant for a special permit to be the land owner. The school board's interest in the land could not be disputed. The court found that as long as the property at issue remained committed to school use, the board's control over it could not be usurped. The central dispute over whether the board had sufficient interest in the property was found by the court to be resolved by the board's duty to educate the children and transport them by bus to fulfill that duty. The court found the board possessed the necessary and required interest for making the application and that the board was a real party in interest.

Disposition: The Supreme Court of Connecticut set aside the judgment of the Court of Common Pleas of Fairfield County and remanded for further proceedings.

Citation: *Kirkpatrick v. City Board of Education of Russellville*, 29 S.W. 2d 565 (Ky. App. 1930).

Key Facts: This case was brought seeking a Declaratory Judgment to test the validity of a plan proposed to finance the construction of a high school in Russellville, a city of the fourth class.

At the time in which this case was filed, the current school in Russellville had been condemned, and the City Board of Education was in dire need of a new school. The City Board of Education sold and conveyed a piece of property to a corporation known as the Russellville School Improvement Corporation. The terms and conditions of the sale of the property were as

follows: The Russellville School Improvement Corporation agreed to construct on the site a new school building, and was to encumber the property in a sum that was not to exceed \$75,000.00, for which the corporation was to issue interest bearing bonds, notes, or other obligations, secured by a mortgage on the property.

The corporation proposed to lease the property to the City Board of Education for a 1-year term, with the privilege of renewal from year to year for a period not to exceed 20 years. The annual rent was set at \$6,000.00, which was within the constitutional debt limit for the City Board of Education. The City Board of Education agreed to pay all the taxes, insurance, and maintenance on the building, and the corporation agreed to retire the bonds out of the rent paid for the use of the building. It was further agreed that when the mortgage was fully discharged, and all other liens and claims were fully paid, the City Board of Education could require the conveyance of the property free of the lien. If the Board chose not to occupy the property for the 20-year period, then the property was to be sold, and the proceeds would be paid first towards the mortgage, and the surplus, if any, would go to the City Board of Education.

Issue: The Court here took it upon itself to outline the issues presented as follows:

1) May the City Board of Education legally convey the property for the purposes indicated?; 2) May the Russellville School Improvement Corporation legally hold and encumber the property?; and 3) Will the execution of the lease involve the incurring of an indebtedness in violation of Sections 157 and 158 of the Constitution? (*Kirkpatrick v. City Board of Education of Russellville*, 29 S.W. 2d 566 (Ky. App. 1930))

Holding: The agreement to sell the school site to the corporation with an option to lease and repurchase was valid, and was not in violation of the constitutional debt limitation.

Reasoning: The Court provided no discussion regarding their opinion other than to point out that the issues before them in the present case were substantially the same as were those in *Waller v. Georgetown Board of Education*, 273 S.W. 498 (1925). The Court determined that

based on the law set out in *Waller*, and for the reasons given therein, the proposed plan was valid, and the judgment of the Trial Court was affirmed (*Kirkpatrick*, 1930, at 566).

Citation: *Spaulding v. Campbell County Board of Education, et al.*, 39 S.W. 2d 490 (Ky. App. 1931).

Key Facts: This case was brought by the appellant, for himself and on behalf of other resident taxpayers living within the sub-district, seeking to enjoin the Board of Education from purchasing a certain site, and from awarding a contract for the erection of a school thereon. On final hearing, the Trial Court dismissed appellant's petition and refused to grant the relief sought.

The evidence presented at trial was that a controversy arose over the selection of a school site in the Dale Common School Sub-District in Campbell County. Due to the lay of the land in said sub-district, it was difficult to find a suitable piece of property with enough level land on which to build the school. When the necessity for the new school arose, the County Board of Education spent 5 or 6 months evaluating available locations. The Board eventually chose the "Klump" site over the other sites given consideration. A petition signed by 277 persons, a majority of the school electors, was presented to the Board protesting the proposed site; however, the Board refused to select a different site.

The appellant presented evidence that showed that other sites were more convenient and accessible to the greater number of school pupils (*Spaulding v. Campbell County Board of Education, et al.*, 39 S.W. 491 (Ky. App. 1931)). The County Board argued that they had carefully studied the situation and determined that the selected site was the most convenient and the Director of School Buildings and Grounds for the State of Kentucky testified on the Board's behalf.

Issue: Did the School Board have the authority to select the school site in question, above the objection and protest of the majority of voters within the school district?

Holding: The County Board of Education has discretion in selecting school sites, and their selection should not be interfered with, unless it appears the Board acted arbitrarily or abused its discretion (Ky. St. §§4434(a), 4439, 1904). The findings and the judgment of the Chancellor were affirmed by this Court.

Reasoning: In reaching their conclusion, the Court looked at the evidence presented to the Chancellor and noted that there was “a conflict in the evidence on practically every question entering into the suitability of the various sites for school purposes and as to future development with reference to them” (*Spaulding v. Campbell County Board of Education*, 39 S.W. 491 (Ky. App. 1931)). Again, both sides presented arguments suggesting the convenience, or lack thereof, of the selected site. The Court determined that Ky. Statute §4439 was the controlling statute in the present case. Section 4439 affords and empowers the County Board of Education to purchase sites at their discretion. The Court stated that no evidence was presented that suggested that the Board acted capriciously, arbitrarily, or which suggested that they abused their discretion. However, there was evidence presented that the members of the Board carefully evaluated the situation and gave the selection of the site substantial thought and consideration, and nothing was presented that indicated that the Board was in any way controlled by personal considerations or ulterior motives. This Court cited the Court in *Vincent v. Edmonson County Board of Education*, 183 S.W. 232, 234 (1916), stating that,

We do not deem it necessary to go into a detailed analysis of the proof. It is not the Court’s duty to select a site; it is only to determine whether the Board of Education abused a sound discretion in performing that duty. The weight of the proof is largely with the Board of Education; and if we had any doubt upon the question, it must be found in favor of the Board of Education and the finding of fact by the Chancellor, which

sustained the Board. . . . We will not set aside a finding of fact by the Chancellor where the proof is contradictory, we will not disturb his judgment.

This Court reasoned that in the case at hand, the Chancellor heard the evidence and was, or at least should have been, more familiar with the surrounding conditions and how to apply the evidence presented to those conditions (*Spaulding* at 491, 1931). In light of §4439, the law set out in *Vincent* (1916) and the absence of any suggestion that the Board abused their discretion, the Court concluded that the judgment of the Chancellor should not be disturbed.

Citation: *Harms v. School District No. 2*, 298 N.W. 549 (Neb.1941).

Key Facts: The Plaintiff, Harms Lumber Company, brought this action in an effort to recover for materials and services that it furnished to the defendant school district. On June 8, 1936, the School Board held a meeting in which an election was held in which the electors voted 25 to 19 to build a new school at a different location. The electors further voted 24-20 in favor of levying a tax to fund the new construction. Neither vote was carried by two-thirds of the electors present as required by Comp. St. 1929, §§79-208, 79-216.

Per the vote, the electors appointed a building committee. That committee, together with two members of the School Board, entered into a contract with the Plaintiff for the materials that were to be used for the construction of the school. Subsequently, the materials were delivered and construction began. The electors who opposed the new school site and construction sought to enjoin the construction of the school. On August 12, 1936, an attorney on their behalf directed Harms not to deliver any more material to the new school site. The electors in opposition, Appellees, contended that the school construction was in contravention of two statutes, and that because the Board was not authorized to enter into the contracts with Harms, he should be unable to recover on the contract or on the theory of *quantum meruit*.

Issue: Can Harms Lumber Company recover the value of the materials it provided to the new school construction pursuant to the contract it entered into with the School Board if the School Board was not authorized to enter into that contract because the vote of the electors in favor of building the new school did not meet the statutory requirement? That requirement being that two-thirds of the electors present must vote in favor of the new construction.

Holding: The court reversed the trial court's ruling, and held that Harms could recover stating that "power exercised illegally or without proper authority, same not being 'ultra vires,' does not preclude action for the reasonable value of materials and services furnished."

Reasoning: Again, those opposed to the new school construction contended that the contracts in question were "ultra vires," and that the Board had no authority to construct a new school because of the defective vote approving said construction. This court quoted *Rogers v. City of Omaha*, 114 N.W. 833 (1908), stating that "'ultra vires' contracts of a municipal corporation are such as the corporation has no power to make under any circumstances or for any purpose." A contract of a municipal corporation is "ultra vires" in its proper sense when it has no power under the existing legislation under any circumstances to enter into such a contract. Had the contract in this case truly been "ultra vires," then Harms may have been barred from any recovery. The court did not touch on that. Here the court reasoned that there are several sections of the statutes that give general power to the school districts and boards to build schoolhouses. Thus, because the school board had the general power to build a new school, its action was not "ultra vires." The court did state that the board's action may have been illegal or done without the proper authority, but because the school district had the general authority or powers granted to it by the legislature to construct a new school, there may be a recovery for the reasonable

value of materials furnished, even though the statutory requirements may not have been carried out in making the contract.

### Case Briefs Concerning Use of School District Property

This section describes court cases pertaining to the use of school district property. The 35 cases reviewed in this category were selected from West's Education Law Digest, under the school district property category and key number 365 (Schools). The cases in this section are organized in sequence by date. Moreover, the cases reviewed in this section are limited to litigation pertaining to the use of public school lands and facilities.

Citation: *Hazleton Area School District v. Zoning Hearing Board*, 566 Pa. 180, 778 A.2d 1205 (Pa. 2001), 156 Educ. L. Rep. [1136].

Key Facts: In 1990, the Zoning Hearing Board ("Board") of Hazel Township granted the Hazleton School District's ("School District") request for a special exception to the zoning regulations for a specific part of town. This area was zoned residential but the Board granted variances to allow construction of a new high school and later adjacent athletic fields and tennis courts. The Board placed specific restrictions on the design of the athletic fields to minimize impact on the surrounding area including residential homes.

In 1994, the School District again sought specific relief from the Board. The School District applied for a waiver of some of the originally imposed restrictions. The School District sought to install dugouts, water fountains, backstops, and a score board. Neighboring citizens expressed concern about the changes, so in response the Board limited use of the fields to school competitions and practices. In 1996, the School District submitted another application seeking permission to modify the use of the baseball field. Specifically the School District would have

the authority to rent the field. This would allow an unspecified number of groups to use the fields for baseball, but without restriction as to the time of day or evening.

The Board recognized that surrounding structures and residences would be adversely impacted by the change and denied the School District's request. The School District appealed the Board's decision on claims of abuse of discretion, claiming the Board's decision was advisory in nature but not binding. The Court of Common Pleas upheld the Board's decisions and an immediate appeal to the Commonwealth Court ensued. The Commonwealth Court affirmed and an appeal was timely filed.

Issue(s): At issue was whether the School District's statutory authority preempted conflicting local zoning ordinances and whether the School District's request was statutorily protected based on the broad authority vested by law.

Holding: The Court held that the Board's denial of the School District's application did not infringe upon or prevent the exercise of the School District's authority. Further, the Court held that the School District's authority, as created by statute, did not preempt that of the Board.

Reasoning: The School District argued that the Commonwealth Court restricted the School District's authority to regulate use of the fields in question as they fall under school property, buildings, and/or grounds. The School District asserts that its right to make determinations regarding the use of its facilities, such as the baseball field, are just like its power to decide school locations, with said power being recognized by the Court as unlimited by local land use restrictions and zoning ordinances (*School District of Philadelphia v. Zoning Board of Adjustment*, 417 Pa. 277, 207 A.2d 864 (1965)).

There is no dispute between the parties that the School District held the authority to lease school buildings or athletic fields to reputable, charitable organizations. In addition, the School

District's power to permit use of school facilities for official meetings of the governing body or to charge for use by organizations or groups of persons for charitable purposes was not in dispute. However, the School District argued that the legislative intent of the statutes granting such authority included specific authorization to allow use for non-school-related activities.

Alternatively, the Board argued that the School District is free only to regulate use of school property when it is related to school activities. The Board asserts that here, the School District is not seeking authority for the management of facilities related to school activities; rather, the use for which the School District applied was non-related to school activities.

Here, the court recognized conflict between statutes and the conflict of authority each such statute granted. When an issue involves allegedly conflicting statutes, the Court must essentially interpret the statutes. Previously, the Court employed a two-step process to analyze conflicting statutes. First, the Court must determine which government entity was meant to be preeminent; however, in the absence of express legislative mandate, the Court next looks to legislative intent (*Commonwealth, Department of Gen. Serv. V. Ogontz Area Neighbors Association*, 505 Pa. 614, 483 A.2d 448 (1984)). In *Ogontz*, the Court recognized that in making a determination as to which governmental entity preempted, there would be frustration extending into the community, regardless of which authority controlled.

The Court has previously recognized that different state and local powers regulate different areas of concern thereby eliminating an actual material conflict (*Skepton v. Northampton*, 87 Pa. Comm. 24, 1983). However, the Court has held that local zoning boards lack authority to prevent school districts from fulfilling the duties conveyed by statute and interfering with the obligation to educate students. The case at issue is distinct from this fact as the Board has reused what essentially amounts to commercial use of a school athletic field. The

Board's denial of the School District's application does not interfere with the education of the students.

The Court makes a clear declaration that a school serves a function of the community in which it exists. The School District, acting under authority granted by statute, may be permitted to allow use of fields and facilities for non-school-related activities; however, the liberal authority granted the School District does not exclude local authorities from having a say in how such permissive authority is used. To allow the School District to have absolute discretion regarding use of school property for non-school-related functions, without concern or obligation to the community wherein it exists, is a misinterpretation of the Public School Code.

Here, the School District's management of school facilities is not in question, but the School District's assertion of right over management when unrelated to its statutorily mandated education duty, falls short in preempting the local zoning authority. The Board's denial of the School District's application is based solely on its request to allow use of school fields for use that will interfere and impact the area and neighboring citizens. The Court held that the Board acted based on concerns of health, safety, and general public welfare. Therefore, no abuse of discretion by the Board was found.

Disposition: The Supreme Court of Pennsylvania affirmed the order of the Commonwealth Court, which affirmed the order of the Court of Common Pleas setting forth the binding nature of the Board's decision.

Citation: *Herald, et al. v. Board of Education, et al.*, 65 W. Va. 765, 65 S.E. 102 (W.Va. 1909) 31 L.R.A.N.S. 588.

Key Facts: In 1892, a conveyance to the Board of Education of Sardis District was executed. The conveyance was for the purpose of constructing a schoolhouse to benefit citizens

through a free school. In May 1907, the Board authorized the lease of certain portions of the land for the purpose of producing oil and gas. The lease was for a period of 1 year and continued for anytime thereafter as long as either oil or gases were produced from the land. In July 1907, John Herald and several other resident citizens, each of whom were taxpayers, filed suit seeking to enjoin the use of the land by the lessees and to have the lease declared illegal and void. Herald alleged that the Board acted outside of its authority when entering into the lease and also alleged that the lease would likely interfere with the conducting of and effectiveness of the school.

Issue(s): At issue was whether the Board acted outside its scope of authority by entering into a lease allowing use of school property for secondary purposes.

Holding: The Court held that the lease was outside any duty imposed upon the Board, was not executed in the furtherance of education, and was nullified.

Reasoning: This case was recognized as important because it dealt with misappropriation of public land for unintended private uses. The citizens that filed suit did so based on the claim that the Board leased the land for use that was unintended or anticipated at the time the land was conveyed for use as a free school. The Court recognized the rights of citizens and resident taxpayers to sue in an effort to prevent diversion of land dedicated for a town site to private use. (*Davenport v. Buffington*, 97 F. 234, 1899). This was contradictory to the Board's claims that Herald lacked standing to initiate the action, because no individual can enjoin a public nuisance, unless he has a special interest affected (*Talbott v. King*, 32 W. Va. 6, 9 S.E. 48, 1889). Here, the Court recognized that the local residents who filed suit were the embodiment of someone directly affected by such an event.

The Court recognized the creation of school districts and boards of education as quasi-corporations. A board of education is recognized as a public corporation created and empowered

by statute; therefore, as part of a larger governmental body, it is set out to fulfill specific functions and local interests of the community in which it exists. Further, the Court reinforced that school districts and boards are tasked with contracting in relation to school matters; however, in the case at hand, the lease was not one directly related to school matters.

Once the rights and duties of citizens and school districts were recognized, the Court set forth to determine the validity of the lease at issue. In its decision, the Court stated that,

School districts are usually vested with the power of making contracts in relation to school matters. It does not mean that such a board is a business corporation. That it can mine, manufacture, produce, barter, and trade, things utterly foreign to the object of its formation. It cannot lease land held by it though it has the fee simple legal title, but solely and only for the purpose of a schoolhouse. It cannot lease it for money making, because the statute provides for the accomplishment of its object by taxation, not by negotiation in the business world. (*Herald v. Board of Education*, 1909)

The conveyance that granted the property to the school district set out that such land was to be retained for use as a free school. The court held that the school board had the right to sell the lot and dispose as necessary as long as proceeds were put directly into acquiring and maintaining another educational facility. The duty of the school board to protect the trust given to it is essential. More importantly, the court emphasized that the authority is limited to actions related to school furtherance and relevance, which was not the case with the lease at issue.

Disposition: The Supreme Court of Appeals of West Virginia reversed the order issued by the Circuit Court of Harrison County, thereby annulling the lease and perpetuating the injunction.

Citation: *Student Coalition for Peace v. Lower Merion School Dist. Bd. Of School Directors*, 633 F. Supp. 1040 (E.D. Pa., 1986).

Key Facts: The Student Coalition for Peace, a non-school sponsored student organization, sought a permanent injunction preventing the Lower Merion School District School Board from

prohibiting their use of school facilities for a planned political meeting and peace demonstration. The School Board denied the SCP use of the school's property, which included the football stadium and gymnasium. SCP filed suit based upon the School Board's rejection of their request. The School Board asserted that use of the school property at issue could be prohibited at their discretion.

Issue: At issue was whether the school property, when viewed in light of permissive uses previously allowed by the school board, was a limited open forum under the Equal Access Act, 20 U.S.C. § 4071 and whether the prohibition of SPC's use was lawful.

Holding: The court held that the School Board's denial of SCP's request to use the boy's gymnasium prohibited SCP from exercising their rights pursuant to the Equal Access Act and, while the School Board had authority to protect its property with reasonable regulations, the Equal Access Act affords students the right to use school property for purposes beyond First Amendment Constitutional guarantees.

Reasoning: The SCP alleged that the School Board had allowed previous noncurricular activities to be held and conducted on school property, which the court determined had occurred. SCP set forth a claim that the school board, by previously allowing noncurricular activities to be conducted on school property, had created a limited open forum under 20 U.S.C. § 4071. While the School Board had allowed earlier use of school property and facilities to noncurricular use, SPC failed to provide any proof that the School Board had made it a practice to allow use of property for noncurricular related student groups that invited members of the general public.

The court rendered its decision after analyzing not only the Equal Access Act itself, but also the Congressional intent behind enactment of same. To be considered a limited public forum, there must be limited access for certain viewpoint neutral speech and limited groups. SPC

argued that the right of use of school property set forth in the Equal Access Act also expanded rights to include free speech as set out in the first amendment of the constitution. The School Board argued that the expansion of use of school property set out in the Equal Access Act did not support the allowance of political events just because earlier charitable or athletic events had been held there. The court found that when enacting the Act, Congress afforded students the right to use of property beyond the constitutional guarantees in the First Amendment.

The court ultimately interpreted the Act as affording school boards and districts a choice in creating either a limited open forum, allowing access and equal use to all student groups, or denying access to all noncurricular groups. Further, the court found that the field at issue, Pennypacker Field, was not a limited open forum due to the use of the property for a 1985 Activities Fair. However, the boy's gymnasium was found to be a limited open forum and the court determined that the prohibition of SPC's use of the boy's gymnasium was contrary to the rights set out under the Equal Access Act.

Disposition: The United States District Court for the Eastern District of Pennsylvania denied the injunction and reconsideration. On appeal, the Court of Appeals affirmed in part and vacated and remanded in part. On remand, the District Court held that under the Equal Access Act, the School Board could not prohibit the use of the high school gym by the Student Coalition for Peace.

Citation: *Hempel v. School Dist. No. 329 of Snohomish County, et al.*, 59 D. 2d 729 (Wash.1936).

Key Facts: The appellant, as plaintiff, brought this action to permanently enjoin the Defendant school district and its officers from carrying on and permitting to be carried on, in its school building or on its premises, anything in the nature of commercial activities such as the

sale of candy and ice cream and the serving of lunches. In their answer, the Defendants admitted that the student body of the school associated themselves together in a voluntary organization known as the Student Association, and that association, with its own funds and wholly upon its own credit, served light lunches to the members of the student body in the school building and purchased, sold, and supplied to the student body in connection with said lunches, candies and ice cream. The service of the lunches was for the convenience of the student body and was not carried on for the purpose of deriving any profit whatsoever to any individual or to the school district. It was also noted that without the service, the student body would be without adequate facilities for obtaining lunch. The evidence also showed that most of the students were unable to go home for lunch and that discipline was better maintained and the general welfare of the students was said to be advanced by keeping them together at the school rather than having them scatter through town during intermission.

The testimony further revealed that any small amount of profits that were derived from the sale of said lunches were expended by the student body in the advancement of its extracurricular affairs.

Issue: Was the school district authorized in permitting the student body to sell lunches and candy on its premises?

Holding: The Court held that the school district had the authority to permit the use of the building or premises by the student body for operation of a cafeteria and candy counter open to students only during noon intermission, where said cafeteria and counter were financed entirely by the student body and profits were used for the benefit of the student body in the advancement of its extracurricular affairs.

Reasoning: In the case at hand, the Court looked to Rem. Rev. Stat §§4776 and 4782. The Court emphasized that Section 4782, “gives to the directors of each school district, custody of the property of the district and power to transact all business necessary for maintaining school and protecting the rights of the district.” The Court stated that “If statutory permission be necessary to authorize student activities in school buildings, then we think such authority is found here” (*Hempel v. School Dist. No. 329 of Snohomish County, et al.*, 186 Wash. 687 (1936)).

The Court further opined that custody of the property was vested in the directors in order that schools may be maintained and carried on. Schools are maintained and carried on for the purpose of educating students, and advancing and maintaining their welfare while they are being educated (*Id* at 687). An education consists of more than just the study of books, but also by the development of body and mind, in proper directions and student extracurricular activities have educational value, some more than others, but all leaning strongly in that direction (*Id* at 688).

The Court further reasoned that no statute exists explicitly authorizing the directors the power to permit the use of school buildings for anything except the conduct of the schools, but, as incident to the general power to control the property and conduct the schools and transact all necessary business, “it would seem not unreasonable to hold that the directors have also the necessary implied power to permit the use of school buildings for such student activities in educating those for whom the schools are established” (*Id* at 688).

Citation: *Ralph v. Orleans Parish School Board*, 104 So. 490 (La.App.1925).

Key Facts: The Plaintiff was a citizen, property owner, and taxpayer of the City of New Orleans. He also was the owner of a retail merchandise establishment near the Andrew H. Wilson School. The Plaintiff brought this action to restrain the Defendant from allowing two

janitresses at the school to sell luncheons and comestibles at or in said school to the teachers and pupils thereof for a small profit. The School Board answered that the sale of luncheons was permitted as a means of supplying teachers and students with sanitary food on school grounds, so that they may not have to run the dangers of leaving the school grounds during lunch hour and recess; that this practice of providing food in a safe sanitary manner had long been a custom of the Board, and it is monitored so closely under the Board's supervision that its hygienic department has laid down, with the sanction of the Board, rules and regulations governing the keeping of luncheons on school premises. All such rules were looking to the service of the children, to their health and preservation, and that this custom of providing lunch is for the benefit and advantage of the children, and in the best interest of public education.

Issue: Was the School Board's practice of allowing the janitresses to sell merchandise on school grounds, which is public property, a violation of Louisiana law?

Holding: The Court held that,

the mere sale of luncheons, etc, on the school premises, during lunch hours only, to teachers and pupils only, under the circumstances and for the purposes set forth in Defendant's answer, is only incidental to the main purpose of said schools, and is in the interest of the safe, sanitary and efficient conduct of said schools, and that the same is not an unlawful use of said buildings under such circumstances. (*Ralph v. Orleans Parish School Board*, 104 So. 490 (1925))

Reasoning: In reaching its conclusion, the Court cited *Sugar v. City of Monroe*, 32 So. 961 (1902). In *Sugar*, a municipality was conducting, as a business and for profit, a public theatre in a school building dedicated exclusively to public school purposes. In *Sugar*, the Court did hold that the city's use of the school was improper, but the Court further stated,

In expressing this conclusion, we do not wish to be understood that the city authorities may not make such casual and incidental use of the building in question, not inconsistent with, or prejudicial to, the main purpose for which it was erected, as they may deem advisable. (*Sugar v. City of Monroe*, 1902)

In this case, the Court reasoned that, as opposed to the city's actions in *Sugar*, the board's practice of allowing the sale of luncheons on school property, only to teachers and students, and only at lunch and recess, was incidental to the main purpose of the school, and was thus not an unlawful use of the school buildings.

Citation: *Presley v. Vernon Parish School Board*, 139 So. 692 (La. App.1932).

Key Facts: Vernon Parish School Board acquired and owned about 4 acres of land. On the land was located a two-story brick building known as Evans High School, in which was conducted said high school. The grounds surrounding the building were used as a playground. On or about September 12, 1930, by ordinance duly adopted, the School Board authorized R. L. Morgan, its president, to lease to T. W. Simmons a part of said school grounds for a period of 10 years. Mr. Morgan, acting on behalf of the Board, executed the lease, with the consideration being \$10.00 per year.

T. W. Simmons was about to erect a building on the leased land, but was stopped by an injunction issued against him and the School Board by Elias Franklin Presley, not to be confused with one Elvis Presley. Elias Presley alleged that the building was to be erected for mercantile purposes and that the School Board had neither power nor authority to lease the school property for such a business while it was to be used for school purposes.

The School Board and T. W. Simmons alleged that the building was not to be erected for mercantile purposes, but it was to be a cafeteria run in connection with and for the convenience of said school.

The evidence presented at trial showed that T. W. Simmons also intended to sell other goods such as school supplies. The evidence further showed that T. W. Simmons did not allege

that he would not sell anything else and he did not commit himself to doing business solely with the teachers and students at Evans High School.

Issue: Did the Vernon Parish School Board have the authority under the law, by means of the lease executed in favor of Simmons, to divest itself of its authority over school property, for the period of time and for the private business purpose of T. W. Simmons?

Holding: The Court held that a school board does not have power under the law to lease ground acquired for school purposes, on which a school building had been erected and which a public school is being conducted, “unless as stated in 32 So. 961, it is for some casual use, not prejudicial to nor inconsistent with the main purpose for which the property was acquired, and such an exceptional situation does not exist in the present case.” The injunction issued by Elias Presley was reinstated and was ordered to be maintained and perpetuated.

Reasoning: Here the Court struggled with the fact that by leasing the subject property, the school board was divesting itself of any control whatsoever over the property for the lease term.

Although Simmons said that he was going to erect a cafeteria for the benefit of the school’s students, there was nothing in the lease that stated that he had to, nor that he could not operate his business in any manner he wished. The Court stated that in this case “Simmons proposed to enter into a private business, dealing with pupils and teachers, but also with the public at any hour for his private gain.”

The Court compared the present case of *Ralph v. School Board*, 104 So. 490 (1925). In *Ralph*, the school board merely permitted private individuals, without any payment, to sell lunches to pupils, at a small profit. The Court in *Ralph* found that it was permissible for the parties to sell lunches at school under mere permission granted by the school board. However, the Court reasoned that in the present case, the lease showed that the school board had

relinquished any authority and control over the grounds for 10 years, and the “business Simmons may do in his own building will be as free from their control as the ground leased.” The Court further reasoned that while it looked reasonable that a cafeteria on the ground might be a convenience to the pupils and teachers, the business conducted by Simmons may become a nuisance, which for the welfare of the pupils and teachers should be suppressed. And such power shall be preserved (*Id* at 221).

Citation: *Tyre v. Krug, et al.*, 149 N.W. 718 (Wis.1914).

Key Facts: The Plaintiff brought this action as a resident taxpayer, asking that the Defendants, who are principals of five public schools, be enjoined from operating stores located in the school buildings under their charge and control, wherein various items were sold for a profit above the costs of said items. It was also shown that the Defendants paid no compensation for the use of the buildings to operate the stores. The evidence presented also proved that the school board denied a request by the Milwaukee Stationers’ and Manufacturers’ Club to prohibit the use of the buildings for this purpose, and “by unanimous vote gave its assent that the same should be continued” (*Tyre v. Krug, et al.*, 149 N.W. 718 (1914)).

The Plaintiff further alleged that he had been injured individually, and requested monetary damages in an amount sufficient to compensate him for the harm he had suffered due to the Defendants’ actions, and further requested that the Defendants be enjoined from operating said stores during the pendency of the suit.

The Trial Court determined that the Plaintiff had improperly brought suit both in equity and in the form of an individual action, and dismissed the action because the cases had been improperly united. The Trial Court further sustained the Defendants’ demurrer and dissolved the injunction. From that order the Plaintiff appealed.

Issue: Did the School Board have the power to authorize the use of public school buildings for conducting private businesses for personal profit?

Holding: The School Board did not have the authority to permit school buildings to be devoted to uses other than for school purposes, aside from those uses expressly enumerated in the statutes (*Tyre v. Krug et al.*, 149 N.W. 720 (1914)). Here the Court held that the Trial Court erred in sustaining the demurrer on the grounds that the Complaint did not state facts sufficient to state a cause of action. The Court determined that the Complaint stated a good cause of action for the relief requested.

Reasoning: In reaching their decision, the Court looked to the statute. The Trial Court based its ruling on. Chapter 459, laws of 1907, §§18 and 8. Section 18 provides, the board

shall adopt at its discretion, and modify or repeal, by-laws, rules, and regulations for its own government, and for the organization, discipline, and management of the public schools under its control, and generally adopt such measures as shall promote the good order and public usefulness of said schools; provided that such by-laws, rules and regulations shall not conflict with the Constitution and laws of the state.

The Court determined that §18 clearly gives the board the power and authority to make regulations and/or modify existing by-laws, rules, and regulations in order to accomplish the purposes of providing the contemplated public education. The Court further stated,

If . . . the Courts showed that the School Board in their official capacity was furnishing books and supplies to pupils as an incident to a successful and efficient conduct of the public schools, we would then have presented to us an entirely different case from the one presented by the alleged facts in this complaint. (*Tyre v. Krug, et al*, 149 N.W. 719 (1914))

Here, however, the facts were that the Defendants were operating stores within the schools for profit. Here, the Court determined that they could find nothing in the statutes indicating a legislative intent to confer authority on the school boards to permit schoolhouses within their control to be used for private businesses (*Id* at 720). Therefore, the Court reasoned

that school boards have not been granted authority to permit school buildings to be devoted to anything other than school purposes, aside from those expressly enumerated in the statutes (*Id* at 720).

Citation: *Cook v. Chamberlain*, 225 N.W. 141 (Wis.1929).

Key Facts: The Plaintiff brought this action as a taxpayer of the City of Milwaukee, asking that the Defendant principal of Riverside High School be restrained from conducting a supply station in a high school building in which books and supplies were sold to high school scholars. In their answer, the Defendant alleged that no books or supplies were sold, except those that are used by scholars in their work in high school; that no profits were made on sales, but the supply station was self-sustaining, so that no part of the expense of operating the station was taken out of the money raised by taxation. No compensation was paid to the public for the use of the room in the school, and members of the faculty of the school devoted some of their time to furnish such supplies to students, and that work was performed entirely outside class hours.

Issue: Did the high school principal have the authority to allow the existence of a supply station in a high school building, whereby books and supplies were sold to students?

Holding: The high school principal was held authorized to sell supplies to students at cost.

Reasoning: The Court noted that the Plaintiff based his right to bring this action largely upon the rule of law set out in *Tyre v. Krug*, 149 N.W., 718 (1914). In *Tyre v. Krug*, the principals of the local school were operating supply stations in school buildings for the private profit of themselves. This Court quoted the Court's ruling in *Tyre v. Krug*, stating,

If the complaint alleged a statement of facts which showed that the school board in the official capacity were furnishing books and supplies to pupils as an incident to a successful and efficient conduct of the public schools, we would then have presented to

us an entirely different case from the one presented by the alleged facts in this complaint. (*Cook v. Chamberlain*, 225 N.W. 142 (1929))

In the case at hand, supplies are furnished at cost and the furnishing of such school books, stationery, and supplies, is of great aid and assistance to a successful and efficient conduct of the public schools and that the same is so much needed as to be a practical necessity for the proper conduct of said schools. (*Id* at 142) The evidence also proved that the School Board of the City of Milwaukee granted to the Defendant permission to run the supply room. Therefore, the expenditure of a small amount of taxpayer's money necessary for the operation of the supply room was justified. In light of the aforementioned reasons, the Court found that the principal in this case did have the authority to operate a supply station in the school building.

Disposition: The Supreme Court affirmed the Circuit Court's ruling with modification.

Citation: *Merryman v. School Dist. No 12. Et al.* 43 Wyo, 376m 5 P.2d 267(1931).

Key Facts: John W. Merryman, a resident of Crook County, Wyoming, owned and operated a small dance hall that was rented for dances, public meetings, and social gatherings. In 1930, trustees of the school district began leasing a newly erected school building to private organizations for functions such as dances and meetings. The record reflects Merryman's claim that the trustee's public renting of the school building caused a lack of revenue from his dance hall. Merryman filed an action in the district court of Crook County seeking an injunction enjoining the defendants from continuing to allow the use of school property (school building) for functions not school related. Merryman claimed that the school board trustees exceeded their authority by allowing the school building to be used for social activities, athletic contests, and dances. He further claimed that the use of the building coupled with the charging of admission fees that did not directly benefit the school district, constituted a violation of law. The District Court dissolved the temporary restraining order issued at the commencement of the action and

found in favor of School District No. 16. Merryman filed for direct appeal before the Supreme Court of Wyoming, claiming that the trustees exceeded their authority in allowing the use of the school building for secondary functions.

Issue: At issue was whether members of the school district board of trustees, in allowing use of a school building for non-school activities, exceeded their authority and violated the law.

Holding: The Wyoming Supreme Court held that members of the board of trustees for the school district did not exceed their authority and that the allowance of the activities in question did not manifest an abuse of discretion.

Reasoning: The record shows that Merryman's claim that the board had rented or leased the property to private groups for activities unrelated to school, was accurate. Yet, the court found that as long as proper maintenance and conduct of the school was not interfered with or hampered, and school district property not defaced, injured, or destroyed, the law vests a generous amount of discretion in the school district electors in determining what uses shall be made of school district property. The court cited *Nichols v. School Directors*, 93 Ill. 61, 34 Am. Rep. 160 (1879), where the court held that an incidental use of a school building for the holding of religious and other meetings, when not occupied by schools and when not interfering with school purposes, would not be enjoined as illegal.

The court also cited *Gilbert v. Dilley*, 95 Neb. 27, 145 N. W. 999, 1000 (1914), wherein the court's opinion stated that any use of a school which prevents it from being used for school purposes is clearly objectionable. However, in *Gilbert* the court went on to clearly articulate that the occasional use of the schoolhouse for such other purpose, including lectures and religious meetings, ought not to be denied. Both, *Nichols* and *Gilbert* presented cases analogous to *Merryman*, as in each parties claimed that the allowance of use of school property for other

purposes should be barred. However, here the court found that Crook County School District No. 16 and its board members had made determinations for the use of school district property that was within their scope of vested authority.

**Disposition:** The Wyoming Supreme Court affirmed the judgment of the District Court of Crook County.

**Citation:** *Shell Petroleum Corp., v. Hollow*, 70 F.2d 811 (10th Cir. 1934).

**Key Facts:** Through a series of subsequent conveyances, Shell Petroleum Corporation (hereinafter referred to as Shell) gained the oil and gas leasehold rights to a tract of land, a portion upon which a school was built. The dispute as to whether or not the instrument conveying these rights upon Shell was valid involves specific language contained in specific conveyances. The one acre of land previously deeded for use as a school, was at the time of the action, empty as the school had ceased operating and the building had been removed. The area previously held as the school area was excluded by a provision of expectance in the conveyance that ultimately became property of Shell.

However, the heirs of the property owner executed two oil and gas leases to F. H. Hollow after those that would later fall to Shell. As a result of Hollow's initial preparations to drill a well on the land under the school tract, Shell filed suit claiming they had the exclusive right to explore for and produce oil and gas on the acre tract.

**Issue:** The issue was whether the exclusive right to drill for and develop oil and gas on the school site was vested in Shell rather than Hollow.

**Holding:** The court held that upon abandonment of the premises for school purposes as originally set forth, the rights to drill for and develop oil on the site was vested in Shell exclusively.

Reasoning: The court expressly stated that it was immaterial to make a determination as to whether the deed to the school district conveyed a fee-simple subject to a condition subsequent or an estate in determinable fee. The question at the heart of the case was whether the deed from the original land owner, Ediger to Martens, conveyed the entire tract of land including the previously designated school site.

It is the general rule that the servient estate in a strip of land set apart for a railroad or highway right of way, or for a street, or small area set apart for a school, church, or other public purpose, passes with a conveyance of the fee to the abutting legal subdivision or tract out of which the strip or small area was carved even though no express provision to that effect is contained in the instrument of conveyance, and that on the abandonment of the strip or small area for the purpose for which it was set apart and dedicated the dominant estate becomes extinguished and the entire title and estate vests in the owner of such abutting legal subdivision or tract (*Shell Petroleum Corp. v. Corn*, 54 F.2d 766 (10th Cir. 1932)).

The court found that the small corner acre of the parcel conveyed for school interest was, upon abandonment of the designated purpose, a part of the conveyance that ultimately became the property of Shell. Thus, Hollow's conveyance did not afford him interest in or authority of the land upon which he sought to drill.

Disposition: The Tenth Circuit Court of Appeals reversed the decision of the United States District Court of Kansas, Second Division and remanded for further proceedings.

Citation: *Eastham v. Greenup County Board of Education*, 247 Ky. 16, 56 S.W.2d 550 (Ky. App. 1933).

Key Facts: The Greenup County Board of Education did not maintain a high school in Greenup but rather in a neighboring city, some distance away. However, a high school was

maintained by Greenup graded district, which was located within the boundaries of the school district but just outside the corporate limits of the town of Greenup. Attendance of the students at Greenup graded district school would require less time in transport. Parents of several high school students initiated the suit alleging the board of education should be compelled to pay tuition for the students to attend the closest and most convenient high school as well as paying for transportation from their homes to the school. The parties filing the action sought a mandatory injunction compelling the school board to cover the tuition and transportation costs. Ultimately, the Circuit Court dismissed the action. The parents appealed.

Issue: At issue was whether the Greenup County board of education, due to lack of maintaining a high school in corporate town limits of Greenup, were required to pay for the tuition and transportation costs of the students.

Holding: The court held that the board of education was required to cover tuition costs for students described in the action and that the board must also cover costs of transporting the high school students.

Reasoning: The court reasoned that the county's lack of maintenance of a high school at Greenup warranted a duty to the students it affected. The court referenced its previous holding in *Christian County Board of Education v. Morris*, wherein the court held that the county board of education was required to maintain a high school at the county seat or to arrange for the education of students in a high school located there if such was available.

Next, the court looked to the Legislative intent of Chapter 72 of the Acts of 1932, Section 4526b-5 of the Supplement to the Statutes. The court reasoned that the Legislature intended high school students to have the privilege of attending the most convenient high school in their resident counties. Thus, if the privilege to choose school is limited due to the county's failure to

maintain a high school at the county seat, the board is compelled to make all reasonable and necessary arrangements for attendance of the most convenient school.

Disposition: The Court of Appeals of Kentucky reversed the lower court's judgment dismissing the action and ordered further proceedings.

Citation: *Munfordville Mercantile Co. vs. Board of Trustees Dist. No. 39 et al.*, 155 Ky. 382 (1913).

Key Facts: The appellant, a taxpayer in the appellee district, brought this suit to enjoin the issue of bonds by the appellee for the purpose of raising money to erect a new school building. The bonds were authorized to be issued by a vote of the people taken under §4464 of the Kentucky Statutes.

In 1908, a graded school district was established, and in 1910 a contract was entered into between the Board of Trustees and the Board of Education of that county by which it was provided that the Board of Education would maintain a high school in the grade school building and that the grade school and the high school would be conducted jointly. That contract also stipulated that whenever the Board of Trustees desired to erect a new school building, the Board of Education would contribute a sum specified in the contract. Under this arrangement the school was conducted jointly and in a manner highly satisfactory to everybody interested in its welfare.

The objection stated by the appellant asserted that when money is raised by taxation for the erection of a grade school building, the building should be divested solely for the use of the grade school, and therefore no contract could be entered into with the County Board of Education, whereby the County Board would have a voice in the management or an interest in the school building.

Issue: Did the Board of Trustees of Hart County have the authority to enter into a contract with the Board of Education whereby the school building in question would be used as a grade school building and a high school building?

Holding: The bond issue was upheld. Under Ky. St. §4426(a), subsec. 8,

The County Board of Education in the various counties shall have full power and authority to unite with the governing authorities of any city or town in their respective counties for the purpose of establishing a high school for the joint use of the city or town and such county, and to unite with such authorities for the purpose of maintaining such high school if one be already in existence. For this purpose said county boards are hereby given full power and authority to make such contracts as they may deem necessary and proper for the establishment and maintenance of such high schools for the joint use of the county and such city or town.

The court held that the Board of Trustees and the Board of Education acted under the authority provided to them by statute.

Reasoning: The court reasoned that the Board of Trustees and Board of Education both assumed the duty of providing educational facilities for the children in their respective districts and county. Both were public bodies answerable to the people for their conduct, and, when they can accomplish better results by cooperating, as in this case, than they would acting separately, it seems manifest that they should be allowed to do so. The court further stated that the statute in question should be given a liberal construction to enable the parties charged with its execution to carry out the purpose of its enactment. “Arrangements such as were made between the boards in this case should be encouraged, so that both working together may accomplish more good for the cause of education than they could acting separately” (*Munfordville Merch. Co. v. Board*, 1913).

Citation: *Velton et al. v. School Dis. of Slater, et al.*, 6 S.W. 2d 652 (Mo. App. 1928).

Key Facts: This suit was brought by four taxpayers situated in the Slater School District, to enjoin the School Board Superintendent from moving the grade school of said district into the high school building, and the high school building into the aforementioned grade school

building. Both schools were erected out of funds arising from bond issues voted on by the voters of the school district. The grade school was voted on and erected to be used for grade school purposes, and the high school was voted on and erected sometime later for the specific purpose of being used for their intended purposes for a number of years prior to the Defendant's decision to move the grade students into the high school building and vice versa.

Issue: (1) Did the School Board have the authority to remove the grade school to the high school and vice versa? (2) Did the School Board have the authority to use a building for a purpose other than that which the voters of the district originally approved when they voted bonds for the buildings' erections? and (3) Did the board abuse its discretion by moving the students?

Holding: The School Board acted within the discretion afforded to them under the laws of the State of Missouri. A school board may change the location of a grade school and remove high school students to the grade school building, provided that the grade school pupils were taken care of first. The Court further held that simply because the bonds were voted for grade school and high school buildings, the Board of Directors were not prevented from using the grade school building for a high school and vice versa, absent a showing that the School Board abused their discretion. The Court found no such abuse of discretion in this case.

Reasoning: The Petitioners argued that the statute in question gave no authority to the Board of Education to change the site of any school building in the district to another site. The Petitioners argued that a change of site could be done only by the voters in the district. The Petitioners cited several cases in support of their contention. This Court reasoned that the Petitioners' argument had no merit, and that the cases cited by the Petitioners merely provided that a grade school must first be provided before a high school, and that grade school students

cannot be ousted from their school to make way for high school students unless another place for grade school students is provided (*State ex rel. Best v. Jones*, 155 Mo. 570; Section 11241, R. S. (1919)). This Court stated,

We are . . . of the opinion that the Board of Directors of the Slater School District has full power, so long as there is no abuse of its discretion, to change the location of the grade school and remove the pupils of the high school to the grade school building, provided the grade school pupils are taken care of. (*Velton et al v. School District, 1913*)

The law of the State of Missouri vests in the qualified voters of the district or county districts, and in the directors of the city districts, full and complete discretion as to the location of schoolhouses (§7979, 8001 and 8085, R.S. 1889).

As to the understanding of the voters when they were voting bonds for the grade and high school buildings, that the bonds were voted for the erection of a building for a particular purpose, the Court stated that when the bonds were voted, the voters knew of the right of the board to change the location of schools in the district, and thus, they were not deceived.

Citation: *John G. Spencer v. Joint School – Dist. No. 6, ETC*, 15 Kan. 259 (1875).

Key Facts: The Plaintiff, John Spencer, was a resident taxpayer of the school district and he brought this action to restrain the Defendant from leasing its school building for private purposes. Spencer complained that he contributed his proportion of taxes for the building of the said schoolhouse, that his children attended school therein, and that by the improper use of the building the school was being defaced and his children's supplies were being soiled and carried away. Spencer further alleged that the building, erected by public funds for the purpose of a schoolhouse, was, by order of the directors, used for a variety of purposes and gatherings wholly alien to schools and educational matters. The facts did not show that the improper use was done against the wishes or without the consent of a majority of the taxpayers of the district, nor that the building was leased without adequate rent.

Issue: May the majority of the taxpayers and electors in a school district use or permit the use of a schoolhouse built with the funds raised by taxation for uses other than school purposes?

Holding: The use of a public schoolhouse for any private purpose, such as the holding of religious or political meetings, social gatherings, and the like, is unauthorized by law, and may be restrained at the instance of any party injured thereby; and this is the case regardless as to whether or not a majority of electors and taxpayers of the district assent to such use and adequate rent is paid therefore.

Reasoning: A public schoolhouse cannot be used for private purposes. Here, the Court stated that the argument is a short one.

Taxation was invoked to raise funds to erect the building; but taxation is illegitimate to approve for any private purpose. Taxation will not lie to raise funds to build a place for a religious society, a political society, or a social club. What cannot be done directly cannot be done indirectly. As you may not levy taxes to build a church, no more may you levy taxes to build a schoolhouse and then lease it for a church. (*John G. Spencer v. Joint School Dist. No. 6, ETC.*, 15 Kan. 259 (1875))

The Court further opined that it makes no difference as to whether or not its use for school purposes are not interfered with, and that the use for other purposes results in no injury to the building. Nor does it matter that the use results in the receipt of immediate pecuniary gain and benefit. “The extent of injury or benefit is something into which the Courts will not inquire” (*Id* at 259). “The character of the use is the only question.”

Citation: *Carter v. Lake City Baseball Club, Inc.*, 218 S.C. 255, 62 S.E.2d 470 (S.C. 1950).

Key Facts: J. H. Carter and other citizens of Lake City, South Carolina, brought action against the Lake City Baseball Club seeking an injunction preventing the school trustees from leasing the school’s athletic field to the Lake City Baseball Club. The suit alleged that the school district lacked power to lease or permit the use of the school’s athletic field to a professional

baseball league. Further, Carter's suit alleged that the use of the field for playing baseball at night constituted a private nuisance based upon the floodlights shining into the residents' homes, the noise of the loud speaker disturbing the residents in their homes, and the disturbance caused by increased crowd's traffic attending the games.

Issue: At issue was whether the school trustees had lawful authority to lease and permit the use of the school's athletic field to a professional baseball league and whether the games at night and related occurrences constituted a private nuisance.

Holding: The court held that the school trustees lacked the power to lease or permit use of the school's athletic field for professional or semi-professional baseball, that the lease was null and void, and that a private nuisance had been created by the activities since the lease took effect.

Reasoning: The court's reasoning in arriving at their decision was based in part on the fact that the professional league baseball team's use of the field was not permitted so as to avoid any disturbance, distraction, or interference with the school or school related activities. The Lake City Baseball Club began using the school field at the beginning of May. However, the court gave great weight to the fact that the school term did not end until June 1st, which would mean students of the school were practically denied use of the field during the entire last month of school. The location of the field, which was visible from the school, was a distraction for students when preliminary practices were conducted during the day while school was in session. The lease, permitted by the school trustees, did not place any restrictions or limitations on the ball club, thereby allowing interference with school use, school practice, and school sessions.

The court acknowledges several statutes within the Code of South Carolina, namely Section 5358, sub-division 6. This applicable statute subsection reinforced the school board of

trustees' power to lease school property; however, the statute outlined that the authority granted such school board trustees was done so they could take care of, manage, and control the school property of the school district. The court gave recognition of school districts as political and corporate bodies. Based upon that, the court reasoned that the school trustees failure to place restrictions in the lease and protect school activities from interference and thus did not adequately meet the intentions set out by the statute.

The court's analysis referenced *Royse Independent School Dist. V. Reinhardt*, 159 S.W. 1010, 1011 (1913). In that case, the school board contracted with a private corporation allowing them the use of a particular portion of the school campus. However, the contract in the *Royse* case contained certain restrictions to assure there was no impairment of or interference with school sessions and activities. The contract at issue in this case did not make adequate provisions so as to assure the school and its students were not adversely impacted by the ball club's use of the field.

Because the contract did not restrict or limit the ball club's use, any invasion on their contract rights would not be justified. However, the ball club's use directly interfered with the availability of the field for school students and school-sponsored athletic events; thus, the court ultimately held the contract to be null and void. Further, the court also held that based upon facts contained in the record, such as testimony of disturbances created by floodlights, foul balls, loud speakers, increased crowds, and traffic, a private nuisance existed and could only be remedied by the injunctive process.

Disposition: The Court of Common Plea of Florence County issued judgment, found on behalf of the Lake City Baseball Club, and Carter appealed.

Citation: *River Road Neighborhood Ass. V. South Texas Sports*, 720 S.W.2d 551 (Tex. App. 1986).

Key Facts: Ten resident taxpayers and a local nonprofit corporation filed suit based on the school district's failure to give proper notice of an emergency meeting at which a determination was made regarding a proposed lease of school property. The issue of whether or not the school board would agree to lease the stadium was determined at the meeting, but the notice given did not give any indication that there would be final action taken. Thus, the notice violated the Open Meetings Act, as set out in the state statutes of Texas. In addition, the lease executed by the board gave exclusive rights and use of the stadium to South Texas Sports with only limited reservations for use by the school district. The neighborhood association claimed the lease stripped the board of its power to manage and control school property because South Texas Sports had essentially been given the authority and power to determine when the school district could make use of its own property. The River Road Neighborhood Association's civil action sought relief by having the lease deemed invalid.

Issue: At issue was whether the lease executed between the school board and South Texas Sports was valid as the lease contained inadequate property descriptions and ultimately divested the school board of authority to manage the school property, and whether the notice given about the meeting where lease was approved, complied with statutory requirement.

Holding: The court held that the meeting was deceptively noticed, that the lease was invalid for lack of adequate description, and that the lease effectively destroyed the powers of the school district to make and control the stadium and surrounding school property for school purposes.

Reasoning: The court examined each issue individually and gave great weight to the fact that the school board had held meetings prior to the one in dispute, which took place on May 31. The meeting of May 31 was the only one noticed with the limited purpose of “discussion”; yet the board knew that action had to be taken at that time. The court determined that based on the testimony of record and facts of the case, the differentiation between notices of a school board meeting that called for “discussion/action” was well understood to be different from one that called for merely “discussion.” The court found the notice to be deceptive because it failed to alert the public to the fact that action might be taken.

In *Goolsbee v. Texas & N.O.R. Co.* (1951), the Texas Supreme Court said that an emergency is a condition arising unexpectedly and suddenly, not a condition caused by omission or neglect of the person in question, which calls for immediate action. In the case at hand, the school board knew as early as May 9 that there would have to be a final decision made by May 31, as to whether the school board should allow the football stadium to be leased. Thus, based on these facts, the court found that that as a matter of law, no emergency existed on May 31.

In resolving the issue of the validity of the lease, the court first examined the allegations of inadequate descriptions of the property conveyed therein. The lease referenced that the land was in Bexar County, Texas, but did not furnish any written or printed information to identify the exact property being conveyed. The map attached to the lease offered little information to make locating the exact tract of land possible. The court found that when taking both the lease and the supporting map together for evaluation, there was still not clear identity of the property other than which county it was located within. Since the lease failed to furnish any written means or other data by which the property could be identified, the lease was deemed invalid for lack of adequate description (*U.S. Enterprises, Inc. v. Dauley*, 53 S.W.2d 623, 1976).

The contention that the lease divested the school board of its power was based upon the language contained therein. The lease gave South Texas Sports the “exclusive use” of the property for a period of 30 years, with the right to extend for two additional 10-year terms. In addition, South Texas Sports had use of the property rent free unless the school district spent millions of dollars to expand the stadium; otherwise, South Texas Sports would have free and exclusive use of the property until termination.

The court in *Royse Independent School District v. Reinhardt* (1913) held that the school board’s exclusive power of control and management of school property included the power to grant rights of use of school property by others so long as that use did not interfere with school activities. The school board in the case at issue claimed the school district could use the property whenever necessary; however, at all other times South Texas Sports had exclusive use. Therefore, the school board has essentially lost power to determine when the stadium may be used for school events and the board’s surrender of such rights of management was tantamount. The court found the school board exceeded its power when executing the lease in question. The lease had essentially divested the school board of its right to control and adequately manage school property for a period of perhaps 50 years.

Disposition: The Court of Appeals reversed the trial court’s judgment, rendered the lease void, and enjoined South Texas Sports, Inc. and the school board from trying to recognize or employ any part of the lease.

Citation: *City of Bessemer v. Smith*, 156 So. 2d 644 (Ala. 1963).

Key Facts: This is an appeal from a Judgment for \$1,200.00 rendered in the Circuit Court of Jefferson County, Bessemer Division. The Judgment was to compensate Appellee Smith for injuries he sustained from a motor scooter accident. According to the evidence presented at trial,

Smith collided with a chain that was stretched across the road in front of the local Junior High School. Smith's contention was that the City was negligent in that they had failed to keep the street free from obstruction. The street in question was property belonging to the City Board of Education. The street was paved by the Board of Education and the chains were placed across the road by school authorities. Smith contends that the Board of Education dedicated the area for use as a public street, or permitted it to be used for that purpose. Smith also averred that the City, by certain acts of traffic control, accepted the dedication and thereby subjected itself to liability.

Issue: Was the driveway on which Smith was riding when injured a public street?

Holding: The Court held that the Board did not have the authority to dedicate any portion of its real property for use as a public street, or to voluntarily permit the same to be done.

Reasoning: The Court relied on the following statutes in reaching their opinion: §160, Title 52, Code of Alabama, 1940: "All property real and personal and mixed now held or hereafter acquired for school purposes shall be held in trust by the City Board of Education for the use of the public schools of the city." Also, §161, Title 52, Code of Alabama, 1940, which controls the City Board of Education in its acquisition and disposition of its real properties. While §161 does vest in the Board the authority to buy and sell property for the use of the schools, the statute makes no mention that a school board has the authority to dedicate or give away property. By strictly construing the two statutes, the Court concluded that because the property was held in trust for school purposes, it could only be disposed of in accordance with §161. Thus, in view of the above statutory inhibitions and controls, the area under consideration and upon which the Appellant was riding when injured was not a public street.

Citation: *Gibson et al. v. Mabrey et al.*, 145 Ala 112 (1906).

Key Facts: The Complaint was filed by the district trustees for School District 43, in Marshall County. The trustees brought this action to enjoin the County Superintendent of Education from hiring a teacher that the trustees did not approve of. The evidence at the trial was that District 43 only had one schoolhouse. The district trustee, provided for by Acts 1903, p. 290, §6, not being satisfied with only having one school in the district, contracted with a teacher to teach a school at another place in said district. That contract was subsequently disapproved by the County Board, provided for by §10 of the Act, and the County Board entered into a contract with a different teacher to teach at the place fixed by the Board.

Issue: A county that is broken down into districts, each district having a trustee who has hiring authority, and/or the authority to determine the site in which the school should be situated.

Holding: It is the duty of the district trustees to employ teachers, subject to the approval of the County Board; but, it is their duty to employ the teacher to teach at the place fixed by the County Board.

Reasoning: The Court interpreted that the Act of 1903 expressly provides that the authority to determine the location of schools in county districts is encompassed under the comprehensive powers of the Board. The Act states that, “the County Board of Education shall have entire control of the public schools within their respective counties, unless otherwise provided by law. They shall make the rules and regulations for the government of the schools, see that the teachers perform their duties, and exercise such powers, consistent with the law, as in their judgment will best serve the cause of education.” The Court determined that the Act is also clear that the County Board is charged with determining whether the employment by the district trustees of a teacher is in the furtherance of the educational interests of the district. The

selection of and employment of a teacher shall require the concurrence of both the district trustee and the County Board. Although the powers granted to the County Board are very broad, they do not deprive the district trustees of the right to employ teachers subject to the approval of the Board, nor do they authorize the County Board to employ one.

Citation: *Wilcox County School District v. Sutton*, 461 S.E. 2d 868 (Ga. 1995).

Key Facts: Reacting to a school construction plan that included the demolition of an existing school building, a group of residents and taxpayers of Wilcox County brought suit against the school district, Superintendent, and the School Board asking that the Court grant an injunction to prevent the demolition of the school, and that the Court declare that the property on which the school stood had reverted to the city. The evidence presented showed that the property had originally been conveyed to the city in which the school was located, by way of a deed that contained a provision stating, that the “city was to hold the property in fee simple for the purpose of erecting and maintaining thereon a public school building.” To administer the property, the city established the Trustees of the Rochelle Consolidated School district, which issued bonds and built the school at issue. The trial court concluded that the language in the deed created a charitable express trust, and that because the school district held the property in trust, it had no authority to dispose of it without approval of a Superior Court. The trial court further held that the school building was a fixture, and as such, was part of the real estate and could not be disposed of.

Issue: Did the original deed create an express trust providing the district with the authority to demolish the school without approval of the Superior Court, and should the property revert to the city?

Holding: The deed conveying the property on which the school was located, from an individual to the city for the purpose of maintaining a school, did not create a trust, and the property did not revert to the city.

Reasoning: The deed in question made no reference to a trust or to trustees, and it expressed no intent that a trust be established. It merely conveyed the property to the city and specified the purpose for which it was conveyed. Applying the law set out in *Moore v. Wells*, 93 S.E. 2d 731 (1956), the Court determined that the requisite requirements for creating a trust had not been met. Therefore, the Superior Court did not have supervisory power over the property. With regard to the argument that the property had reverted to the city because it had been “abandoned for ‘school purposes’,” the Court made reference to the testimony presented at trial claiming that the property was currently in use for school purposes, and would continue to be so used. The argument alleging the abandonment focused solely on the existing structure, and that the demolition of the building constituted abandonment on the part of the school district. In the context of a deed such as the one in this case, “school purposes” means “any activity that is necessary in the proper maintenance and operation of a school” (*Board of Education of Appling County v. Honker*, 10 S.E. 2d 749 (1940)).

The Court notes that the evidence presented showed that upon the demolition of the building, the property in question would remain part of the campus, and thus would not be abandoned by the district. The Georgia constitution vests the authority to control county schools in the Board of Education. Any challenge of acts of a county board relating to control and operation of the schools must be weighed in light of that sweeping power, which clearly manifests intent to entrust the schools to the boards of education rather than the Courts (*Bedingfield v. Parkerson*, 94 S.E. 2d 714 (1956)). In the absence of evidence that a board’s

decisions violate the law or constitute an abuse of discretion, courts are not empowered to intervene. Neither was the case here, and the trial court erred in failing to enter judgment in favor of the school district. Judgment reversed.

Citation: *McLang v. Harper*, 20 N.W. 2d 454 (Iowa 1945).

Key Facts: Plaintiff taxpayer and elector of the Independent School district of Sioux City, Iowa, on his own behalf and that of other interested taxpayers, brought this action to enjoin the Board of Directors of that school district from permitting the Jewish Federation from occupying and using a vacant school building and its adjacent grounds as a community center. The trial court held that the school board did not have the right to lease the property to the Federation, but permitted the Federation to continue to occupy the building holding that it was not such a group which could be denied the right to use school buildings under Iowa law. Both parties appealed.

Issue: Were the school directors authorized to lease the school to the Jewish Federation for use as a community center?

Holding: The Court held under the statute the school directors could not lease the building and grounds, but were, under a separate statute, authorized to permit a school building to be used for community purposes.

Reasoning: The evidence revealed that the directors chose to lease the school to the Jewish Federation without submitting the issue to the electors of the school district to be voted on. The law of the State of Iowa is that the “power to lease, or other disposition of any schoolhouse or site or other property belonging to the corporation,” shall be by vote of the electors of the school district at a regular election. The Court here stated that by applying the law to the facts of this case, no other conclusion could be reached other than the directors did not have the authority to lease the school without submitting the issue to the electors. The directors

could, however, authorize the use of the school without approval of the electors. The directors of any school corporation may, however,

authorize the use of any schoolhouse and its grounds within such corporation for the purpose of meetings of granges, lodges, agricultural societies, and similar rural secret orders and societies, for parent-teacher associations, for community recreational activities, for public forum and similar community purposes; provided that the board may not grant such permission to any organization known or believed to hold views that are in conflict with the government of the United States of America, and for election purposes, and public interest; provided that such use shall in no way interfere with school activities; such use to be for such compensation and upon such terms and conditions as may be fixed by the board for the proper protection of the schoolhouse and the property belonging therein, included that of the pupils.

The Court reasoned that there was nothing in the record alleging that the Jewish Federation should be excluded under the aforementioned law. As such, the Board of Directors was authorized in allowing the school to be used as a community center and setting the compensation therefore accordingly. The trial court's holding was affirmed on both appeals.

Citation: *Hansen v. Independent School District No. 1 in Nez Perce County*, 98 P. 2d 959 (Idaho 1940).

Key Facts: In 1937, the Respondent school district entered into a lease whereby a professional baseball organization could use the district's baseball field. Per that lease, the burden of preparing the field to host games was placed solely on the baseball organization (team). The team was also responsible for the stadium upkeep and all costs associated with lighting and other various utilities. The Appellants sued to enjoin the use of the school district's property for the playing of baseball on two grounds: First, that the Respondent district had no authority to make the lease for the reason that to do so was a pledge of credit or faith of said school district to the ball club, a private concern, in violation of the Idaho Constitution, and second, that the use of the field in the manner alleged, constitutes a nuisance.

Issue: At issue here, for purposes of this paper, is whether or not under the Constitution of the State of Idaho, a school district can lease property to further a private objective.

Holding: Because there was no imposition of liability directly or indirectly on the school district, and because the credit and faith of the district was not obligated, there was no violation of the constitutional provision, and the district was authorized to lease the field for this private concern.

Reasoning: Art. 8, Sec. 4, and Art. 12, Sec. 4, of the Idaho Constitution prohibits the lending of credit by the state and its political bodies in and of private objectives. To constitute a violation of said provisions, it is essential that there be an imposition of liability directly or indirectly, on the political body. Unless the credit or faith of the Respondent is obligated there is no constitutional inhibition (*Atkinson v. Board of Commissioners*, 108 P. 1046, (1980)). The Court looked to the evidence in the case at hand and concluded that the Respondent pledged none of its funds, nor contributed in any way to the baseball venture. In fact, the Court pointed to the contract stating that, “the contract itself was carefully drawn to eliminate any possibility of district liability.” The Respondent essentially, from this contract, gained a fully equipped baseball complex at no costs to itself, with the complete right to use it for all school purposes. “It is almost the universal rule that the leasing of school buildings and parks for private purposes which are not inconsistent with the conduct of the school is not an unconstitutional use of such property” (*Merryman v. School Dist. No. 16*, 43 Wyo. 376 (1931)).

Citation: *Mary J. Lincke, Plaintiff in Error v. Moline Board of Education, Defendant in Error*, 245 Ill. App. 459 (1927).

Key Facts: The Plaintiff in this case slipped while entering the school auditorium. The Plaintiff had planned on attending a church function in the auditorium. The evidence showed that

the school board had leased the auditorium to the church so that the church could entertain its congregation. The Plaintiff alleged that because of the steps and landing, ice was allowed to accumulate rendering the entrance to the auditorium slippery and dangerous. The Plaintiff further alleged that because the Defendant school board had leased the premises, they were acting in a proprietary capacity for revenue and profit, and were thus liable for her injuries.

Issue: Should the school board be held liable for her injuries because they leased the premises?

Holding: A board of education is a corporation or quasi-corporation created *volens volens* by general law of the state to and in administration of state government, and charged, as such, with duties purely governmental in character, and hence is not liable for torts or negligence of its agents or servants.

Reasoning: The Court stated that here was a clear distinction between the liability of voluntary municipal corporations, such as cities created for their own benefit, and involuntary quasi-corporations established by law as civil divisions of the state. The ground for distinction is that public, involuntary, quasi-corporations are merely political divisions of the state created by general laws to and in the general administration of the government and are not so liable, while those that are liable have privileges conferred upon them at that request, constituting a consideration for the duties imposed upon them (*Bradbury v. Vandalia Levee to Drainage Dist.*, 236 Ill. 36, 46 (1908)). A board of education is a corporation or quasi-corporation created by the general law of the state to and in the administration of the state government, and charged, as such, with duties purely governmental in character. It owns no property, has no private corporate interests and derives no special benefits from its corporate acts. It matters not whether the charge of the lease for the use of the auditorium was to reimburse the board for light, heat, etc., or

whether it was purely for profit. If it was the former, the Court reasoned that the charge was clearly within the power of the Board in connection with its governmental function. If it was the latter, then its laws are beyond the power of the school board. “In either case, no liability would attach to the Board of Education on account of the injury to Plaintiff in Error.” Where governing bodies of municipal corporations engage in unauthorized enterprises, the corporation cannot be made liable for resulting damages (*Tollefson v. City of Ottawa*, 228 Ill. 134 (1907)). The fact that there is a provision in the statute that a school board may sue and be sued does not change the rule of their non-liability in tort actions of this kind.

Citation: *Board of Ed. of Louisville v. Society of Alumni of Louisville Male High School*, 239 S.W.2d 931 (Ky. 1951).

Key Facts: The Louisville Board of Education, by majority vote, passed a proposed resolution to redistrict the high schools. Also proposed was the coeducation of students, as the board thought it was no longer advisable to maintain separate schools for boys and girls. Plans were made to use certain school areas for boys and certain school areas for girls. The chancellor, who deemed the original deed and covenant provisions still binding on the board, would not permit the board’s proposal. The deed conveying the land to the Louisville Male High School contained language conditioning the conveyance on use for beneficial instructions of White male pupils only. The conveyance outlined a provision where any members of the alumni of the Louisville Male High School could enforce the covenant. The board appealed the chancellor’s decision.

Issue: At issue was whether restricting the Board of Education’s discretion by enforcing a covenant in the deed, was detrimental to the public’s best interests.

Holding: The court held that the Male Alumni Association was neither grantor nor grantee, thereby lacking power to invoke the covenant. Further held was that the permanent limitation placed on the board's discretionary powers was an invalid delegation of governmental powers.

Reasoning: The court set forth the rule of *Board of Education of Kenton County v. Talbott* (1941, wherein the court established that a local school board is a quasi-municipal corporation. Thus, the board is governed by rules applicable to strict municipalities.

Previously, in *City of Middlesboro v. Kentucky Utilities Co.* (1940), the court held that public office is a public trust and is fundamental to the performance of the trust. The performance of the trust cannot be delegated to one not chosen nor farmed out. To reassign such governmental powers could only occur with permission of the legislative body, which established the trust. The Male Alumni Association's attempted restriction of the board's discretion and vested authority was a direct conflict against public policy.

The court was not concerned about the coeducation of pupils, or about the location for the proposed integration. The court's epicenter was determining what effect enforcement of the covenant would have upon the Louisville School District as a whole. The overall well being of the Louisville school system as a whole was of utmost judicial concern; however, the preservation of the board's authority and ability to exercise that authority had to remain foremost in the context of the case. The court cites to *McQuillin on Municipal Corporations* (1902, Vol. 10, Section 29.05, page 172), where, in part, it states that restrictions on a municipal corporation's power to contract were designed to protect the public rather than those who contract with the municipality. The covenant was not in the best interest of the public and could not be invoked to confine the board in its decision-making.

Disposition: The Kentucky Court of Appeals reversed the judgment of the Jefferson County Circuit Court, Chancery Branch, and First Division.

Citation: *Caddo Parish School Board v. Pyle*, 30 So.2d 349 (La.App. 1947).

Key Facts: E. M. Pyle operated a planning mill that was within 400 feet of Jewella Elementary School in Shreveport, Louisiana. The Caddo Parish School Board (hereinafter referred to as “school board”), filed an action seeking a judgment enjoining Pyle from operating the planning mill. The school board alleged the mill interfered with the operation of the school due to noise, smoke, cinders and dust particles; that the mill caused nerve strain and exhaustion for teachers and students; that the mill caused impossibility in the conducting of classes; and that Pyle’s mill constituted a nuisance. The school board’s action failed to set out any assertion of their ownership of the property at issue. Pyle responded to the petition, alleging the school board lacked capacity to institute the suit as they had failed to state, in their petition, a claim of control and discretion over the school property.

Issue: At issue was whether the school board had capacity to file suit as their petition lacked assertion of discretion and the amendment thereto was made in open court.

Holding: The court held that the school board had capacity to prosecute the suit to protect its property pursuant to state statute; however, the lower court’s ruling to accept the board’s oral amendment was done in error.

Reasoning: Upon considering whether the school board had authority and capacity to file suit seeking the injunction, the court found that, “the school board of the several parishes are corporate bodies and specifically vested with the power to sue and be sued” (Section 17 of Act Number 100 of 1922). The court reasoned that it would be absurd for the Legislature to create, authorize, and empower a political corporation such as a school board, and then restrict the

authority underlying the entity's creation. Further, when responding to Pyle's claim that the board lacked capacity to file suit, the court noted that Pyle was not named on the documents and sale advertisements. However, the court outlined that the conveyance was only ineffective based on the school's continuous usage and possession for 14 years. For a period of 14 years, the school used and occupied the property openly and notoriously to the extent, adverse claimants would have been placed on notice. Therefore, the court found that even if the title as transferred by the sheriff was void, the school had still acquired title by adverse possession. In addition to the school's open, notorious use of the property, they had improved the area and used it as a playground.

Ga. Code Ann. §85-403 provided a definition of actual possession as being evidenced by "enclosure, cultivation, or any use and occupation thereof which is so notorious as to attract the attention of every adverse claimant, and so exclusive as to prevent actual occupation by another." The facts show that the petition filed by Smith support the court's finding that the school's use was effective enough to attract her attention. Yet, Smith made only one attempt to resist their possession of the land. The school had maintained uninterrupted and continuous use of the property throughout the statutory period and had thus received title by adverse possession.

Ga. Code Ann. § 32-909 outlined the powers afforded a board of education to control the property of school districts, which included receiving the transfer of such property for use by the board of education. The property belonged to the school board and was controlled by the school board and as such Smith could not recover.

Disposition: The Supreme Court of Georgia affirmed the Jefferson County Superior Court's verdict for the school board and affirmed the denial of Smith's motion for new trial.

Citation: *Pell v. Board of Education of Monroe County*, 188 W. Va. 718, 426 S.E. 2d 510 (W. Va. 1992).

Key Facts: The Board of Education of Monroe County filed a completed Comprehensive Education Facilities Plan (hereinafter referred to as CEFP) with the state board of education in the spring of 1990. The CEFP detailed the closing of several individual schools, the transfer of students to other schools and the construction of a new high school. Once the CEFP was approved by the state board of education it was submitted to the regional education service agency (hereinafter referred to as RESA) for consideration of available grants to aid in the reconstruction and reorganization plans. The process of review and approval of a CEFP required several levels of review, which was exhaustive. The CEFP had to contain information about the timelines for completion and progress of the project as well as extensive information relating to public hearings and plans to ensure student health and safety.

Ultimately the CEFP was met with approval and Monroe County was awarded nearly \$8 million in funds from need grants. It was January 1991 when the Board was notified of the grant award. In May 1992, elections were held for Board members and two new members were elected. The new board members' terms did not commence until July 1, 1992; therefore, the board members still in office moved forward with approving contracts with architects and construction managers so as not to delay progress. Only 5 days after the term began for the two new board members, the progress of the new school was delayed and the two new members initiated board action not to move forward with the CEFP. Local citizens filed an action seeking mandamus to compel the implementation of the CEFP by the Board. The circuit courts entered an order of mandamus to compel the board to move forward and implement the CEFP.

Issue(s): At issue was whether the court properly granted the petition for mandamus compelling the board to implement the CEFP and whether the board's decision not to move forward with the plans constituted an abuse of the board's discretion.

Holding: The Court held that the order of mandamus was proper to compel the Monroe County Board of Education to implement the CEFP. Further, the Court held that the Monroe County Board of Education's refusal to act and possible forfeiture of millions of dollars in grants was an abuse of discretion and the board's actions were arbitrary and capricious.

Reasoning: The court emphasized that a school board has the authority to close, consolidate, and open schools as outlined under W. Va. Code § 18-5-13 (1990). However, a school board's discretion is not unfettered. Further, where there is a showing of capricious or arbitrary conduct on the part of the board of education, mandamus will lie to control the board (*Dillon v. Board of Education*, 177 W.Va. 145, 351 S.E.2d 58 (1986)). While the Court felt mandamus was appropriate under the circumstances, the board claimed that mandamus was inappropriate. The board argued that they had authority to make decisions regarding the opening, closing, and consolidation of schools vested in them by W. Va. Code, 18-5-13 (1990).

However, the court held that a local or county board of education has limited power. Further, county boards do not have unlimited power regarding all school closings and planned consolidations (*Board of Education v. West Virginia Board of Education*, 184 W. Va. 1, 399 S.E.2d 31 (1990)).

The court distinguished this case from other cases such as *Haynes v. Board of Education*, 181 W. Va. 435, 436, 383 S.E.2d 67, 68 (1989), wherein the issue was approval. In *Haynes*, the court reviewed whether the board had held proper hearings and conducted proper voting to

approve consolidations procedures. Here, all proper procedures were followed from the local level through the state and regional levels.

Monroe County had been approved to receive millions of dollars in grant money to finance the CEF; however, the board took steps to purposely delay the continued implementation of the plan. The Monroe County's CEF was developed, approved, and granted funding. The board, without reason, took deliberate actions to keep the plan from being put into place and as such the court held they acted in an arbitrary and capricious manner. The actions of the board placed local schools in jeopardy of losing the approved funding and without any clearly articulated reasons as to why the board took such action. The court determined that the board acted outside of its scope of authority and did so in a manner that constituted abuse of discretion; thus, the court held that mandamus was the proper remedy to compel action by the board.

Disposition: The Supreme Court of Appeals of West Virginia affirmed the order of the Circuit Court of Monroe County compelling action on the half of the Monroe County Board of Education.

Citation: *State v. Johnson*, 232 Ind. 358, 111 N.E.2d 803 (Ind. 1953).

Key Facts: There were two township high schools in operation in Gill Township, Sullivan County, Indiana. Following continued decline in the population of Gill Township, a number of meetings were held to discuss the consolidation of the two schools. A petition was circulated and approved by 51% of the population. Indiana University School of Education then conducted a survey and the reports and findings were given to the township trustee. Contained within the survey report was a recommendation that the New Lebanon High School be abandoned and all pupils sent to the Merom High School. At the beginning of the fall school term of 1950, the

trustee abandoned New Lebanon School and transferred the pupils to Merom School. A member of the community brought the action seeking to compel the reopening of the abandoned school.

Issue: At issue is whether the township trustee exceeded legal authority by abandoning the high school and in doing so also abused his discretion.

Holding: The court held that the trustee was within his powers over educational affairs when directing abandonment of the Lebanon High School and that such decision did not constitute abuse of his discretion.

Reasoning: Township trustees were given general powers over the educational affairs of the townships for which they held title. The authority granted to a trustee was broad and the only limitations were regarding construction of new schools and graduation rates to support the construction. The court found no statute or other law that could be interpreted or read, to restrict the trustee from abandoning an established high school. The court found that the township trustee, in this instance, acted within the scope of authority as granted by law.

With regard to the issue of whether the trustee had abused his discretion, the court considered the substantial steps taken prior to the decision for abandonment of the high school. Meetings were held and opportunity was given for open discussion. Next, a petition was circulated, garnering more than 51% resident support for consolidation of the schools. Finally, a survey was conducted and the findings reported and given great consideration. The court found that the trustee had acted within his authority and had not abused his discretion in ordering the abandonment of Lebanon High School. The court agreed that consolidation of the schools was within the authority given over townships' educational affairs; thus, the court did not compel the reopening of Lebanon High School.

Disposition: The Supreme Court of Indiana affirmed the judgment of the Circuit Court of Clay County, Indiana.

Citation: *Decatur City Board of Education v. Aycock*, 562 So.2d 1331, 61 Ed. Law Rep [387] (Ala. Civ. App. 1990).

Key Facts: The Morgan County Department of Human Resources requested use of the Decatur City School Board school facilities for conducting interviews with children at school, each of whom were alleged victims of child abuse. In addition, the Board had instituted a policy that required an official school representative to be present at all such interviews. The Decatur City Board of Education denied DHR's request for using school property and refused to allow private interviews to be conducted without a school official present. In response, DHR filed suit seeking declaratory relief. The trial court entered an order declaring the Board's policies denying use of property for such interviews and the requirement that a school official be present for same to be outside the scope of power conveyed to school boards in the statutes. The Board appealed the decision.

Issue: At issue were whether the Decatur City Board of Education acted arbitrarily, exceeding the statutory authority afforded and whether the statutes governing child abuse are exceptions to the statutory powers conveyed upon school and school boards.

Holding: The Court held that the Board's policy requiring the presence of school officials transcended the statutory authority granted to boards, that the Board's powers were subordinate to statutory provisions regarding child abuse and that the policy impeded legislative intent to protect children and that the trial court's order was clear and appropriate.

Reasoning: Though the Decatur City Board of Education claimed it was within its statutory power when implementing the policy at issue, the appeals court looked closely at the

related statutes governing the topics of school board powers and child abuse. The court agreed with the holding of *Murphy v. City of Mobile* (504 So.2d 243, 244 (Ala. 1987)), wherein the court found that are rules of statutory construction that specific provisions relating to specific subjects are understood as exceptions to general provision relating to general subjects.

The court also gave special attention to the legislative intent of the statutes at issue and found the intent behind statutes governing child abuse to be clearly for protection of children. The powers granted to DHR are given so that the department can respond as necessary in order to further such protection. The school board claimed their enactment of the policy at issue was within their statutory authority as it pertained to the activities and coordination of the schools. The court, however, held that a closer look at the statutes revealed the board's authority over the general coordinating and delegating of school activities and related issues. The schools policy and the board's right to implement the same were secondary to the underlying purpose behind the legislation seeking to protect children from abuse and neglect.

The school's change on policy, beginning in 1986, which required a school representative to be present during the interview, was undermining to the process itself. The record shows that DHR employees testified as to the sensitive nature of the interview and the training required learning to limit any reaction to the statements of abuse. The court relied heavily on the statutes. On its face, the statues governing DHR and the procedures for interviewing alleged victims, allow the department to set up reasonable and necessary procedures to protect the victims. Further, the statutes require the cooperation of governmental agencies, including schools, health departments and law enforcement.

The court found the Boards' policy requiring the presence of a representative in all instances to be somewhat contrary to the purpose of the child abuse statute. Further, the court

found that in emergency instances the presence of a school representative might render the interview inoperable and ineffective. The court admitted that general administration and supervision of public schools vested in the board of education; however, the court found no reasonable justification for the Boards' policy and thereby affirmed the trial court's order invalidating it.

Disposition: The Alabama Court of Civil Appeals affirmed the order as issued by the Circuit Court of Morgan County.

Citation: *State ex rel. Bender v. Hackmann*, 295 Mo. 453, 245 S.W. 553 (Mo. 1922).

Key Facts: In 1907, the Ritenour Consolidated School District erected what was designated as a grade school. The facility built to operate as the grade school was used for the original, specific purpose until 1910. During 1910, the District began using a portion of the building for classes necessary for high school instruction. This continued until 1914, at which time the District began using more available portions of the facility as areas for high school instruction. In 1916, the District again increased the portions of the grade school being used for high school studies and instruction. The District has only constructed one school building which was designated for grade-school level instruction.

In response to the continued use of grade school facilities for high school instruction, F.M. Bender, acting school district director, alleged that the district had altered the original intended use of the facility as a grade school. Further, Bender contended that the district's continued use of the building for high school instruction was equivalent to direct designation of a high school site. The changes in the specific use and location of school property took place over a period of time and were based on decisions made by school district members. Bender claimed

that the District lacked the power to make such a change without first submitting the issue to the people for a vote.

Issue: At issue was whether the school district had authority to change the location of a high school or school facility without the vote and approval of the citizens of the district.

Holding: The Court held that the district had acted within its authority in changing the location of the high school and that such action did not require a vote of the district's citizens.

Reasoning: The statutes set out the governing powers granted to school districts which include authority to establish a high school and secure a location for it (R. S. Mo. § 11241 (1919)). Here, the district's decision to use available space in the grade school building for teaching high school classes was proper and befitting the needs of the people. The space utilized had remained unused. Further, the high school instruction did not cause interference with the grade school program. The district made use of available space in an existing school facility that had been previously built and designated for use as a public school. Therefore, the facility had been designated for school use by the citizens of the community. The court held that altering what level of instruction is offered in unused classrooms located in a specific facility did not constitute the transformation of a grade school into a high school.

Courts have recognized that school districts hold power sufficient to authorize renting space if necessary for the school's purpose (*Kemper v. Long*, 212 S.W. 871 (1919)). Such discretion, as would allow the school district to spend public funds certainly extends to the district's decision to fulfill the need of high school courses without incurring additional debt. The decision was not one that excluded any specific grade levels or courses; therefore, the court held that the purpose of the directors was not one that required a vote of the citizens at large. The district had authority to make the decision without the requirement of a vote.

Disposition: The Supreme Court of Missouri, sitting en banc, ordered preemptory writ.

Citation: *Serich v. Struthers City Board of Education*, 140 N.E.2d 31, 74 Ohio Law Abs. 221 (Ohio App. 1955).

Key Facts: The Struthers City Board of Education was responsible for maintaining and operating the public schools and all school property located within its district. To meet the needs of the students, the board obtained voter approval to issue bonds necessary to cover the construction costs of an adjacent, supporting building to be located at the high school facility. The building was designated The Struthers High School Memorial Field House and was located on school property for school related use. Resident taxpayer, William Serich, found out about a rental agreement between the board and a private company for use of the Struthers High School Memorial Field House. Once Serich was aware of the agreement and use of school property, he filed suit on behalf of the other resident taxpayers to defend the rights of the taxpayers as parties in interest of the Field House. Serich sought an order enjoining the use of the facility for purposes non-school related, which included the rental agreement between the board and John Scott. The Board responded by asserting that Serich lacked standing to initiate the action and further, that his petition failed to state a claim upon which relief can be granted.

Issue: At issue were whether Serich has standing to bring such a suit and whether his petition sufficiently stated a cause of action.

Holding: The Court held that Serich, as a taxpayer and resident, had standing to file suit and had in his petition sufficiently stated a cause for injunctive relief.

Reasoning: The court recognized that Serich's petition stated a claim upon which relief could be granted and also stated facts sufficient to show a cause of action. Serich, acting as a taxpayer and acting on behalf of other taxpayers, had the right to take steps to prove the

allegations contained in his petition. The petition set out with specificity the events that occurred to complete the construction of the Memorial Field House and also set out events relative to the history and background of the claims. Serich's claims are essentially embodied in the idea that the taxpayers have interest in school property, namely the Field House. Further, Serich claims that his rights have been impacted by the actions of the board, specifically the alleged lease allowing use of school property by private corporations for private financial gain. Such a claim attacks whether the board violated state code regulations, thereby qualifying for equitable relief and rendering the contract unlawful. In this case, the court held that Serich filed suit as a party in interest and also stated a sufficient cause of action and claim upon which relief could be granted.

Disposition: The Court of Appeals of Ohio, Seventh District, County of Mahoning, reversed the judgment of the Common Pleas Court dismissing the action, reinstated the action, and remanded with directions.

Citation: *Wayman v. Board of Ed.*, 5 Ohio St.2d 248, 215 N.E.2d 394, 34 O.O.2d 473 (Ohio 1966).

Key Facts: Wayman was a resident homeowner whose property was located immediately across the street from property owned and maintained by the Akron City School District's Board of Education (Board). The board constructed a large parking lot to accommodate the needs of its students, employees and public citizens. Wayman claimed that the parking lot constituted a nuisance. He alleged that the board failed to maintain the area and allowed it to exist in a manner that was a nuisance. Wayman also claimed the large quantity of traffic was damaging to his property due to the constant stirring up of dust which settled onto his property. Wayman filed suit against the board seeking injunctive relief to restrain the continued use of the parking lot. Wayman argued that the board should not be able to maintain a nuisance that infringes on his

rights as a private property owner. The board asserted in its defense that as a governmental corporate entity, it was immune from negligence suits and was acting within boundaries of its statutory authority in operating the parking lot.

Issue: At issue was whether the board could effectuate the existence and use of public school property and whether the board had authority to continue using the parking lot if it was a nuisance to private property and individuals.

Holding: The Court held that school districts, as a governmental agency, were protected from claims of negligence; however, districts were susceptible to nuisance claims where there was damage or impact on the property of another as result of the district's actions.

Reasoning: The court recognized that boards of education essentially function as quasi-corporations. However, a board is a governmentally created quasi-corporation and as such is created to advance public welfare through control and administration of the public school system. Thus, the governmental nature of a board of education extends immunity from such tort actions premised on liability as the basis for damages. The court reasoned that ultimately a suit against a board of education equates to a suit against the government.

The board argued that the authority vested in a board of education, as dictated by statute, was broad, all encompassing authority to allow the board to make decisions essential to meeting the needs of schools and students. Further, a court lacks authority to control or restrain a board in exercising its judgment unless there is evidence of abuse of discretion, fraud or collusion by the board (*Brannon v. Board of Education of Tiro Consolidated School Dist.*, 9 Ohio St. 369, 124 N.E. 235 (1919)).

The court recognized the statutory authority afforded school boards; however, the rights of a school board should not create a nuisance that interferes with another person's rights, such

as use and enjoyment of their property. While the board may be immune from tort actions of liability, claims of nuisance are different. Where a nuisance is effectively created or perpetuated by a school board, the individual whose property is affected, has a right to seek relief to enjoin such nuisance (75 A.L.R. 1196, 1202; 56 A.L.R.2d 1415, 1417; 86 A.L.R.2d 489, 521 (1940)).

Essentially, the court designated the issue in the case at hand to be whether governmental immunity is good against a nuisance claim when the board of education is the creator and cause of the nuisance. The court cited the reasoning in *Brannon v. Board of Education*, wherein it was held that a board of education has authority to create and maintain necessary parking lots; however, the board of education's creation and maintenance of a nuisance is an abuse of the discretion granted by the Legislature (*Brannon v. Board of Education of Tiro Consolidated School Dist.*, 9 Ohio St. 369, 124 N.E. 235 (1919)).

A nuisance will not be excused regardless of the general use and public benefit when the property of another is endangered or damaged. Such a case would be grounds for a suit in equity to seek injunctive relief. Parking lots, such as the one at issue, can be constructed with specific goals of avoiding the creation of a nuisance and avoiding damage to the property of others.

Disposition: The Supreme Court of Ohio affirmed the judgment of the Court of Appeals, which held the board was subject to an equitable action to enjoin a nuisance, and the case was remanded to the Court of Common Pleas for further proceedings.

Citation: *Silverman v. Board of Education of Millburn Township*, 134 N.J. Super. 253 (N.J. Super. 1975).

Key Facts: The Millburn Township Board of Education had proposed the idea of closing an area elementary school to lease the facility to the state's Department of Education. The Department of Education planned to use the school for the hearing handicapped but local citizens

opposed the plan. Bondholder and taxpayers who resided in Millburn instituted a civil action to stop the closing of the school. The citizens filed suit seeking to restrain the Board from moving forward with its proposal. The citizens claimed that as taxpayers and bondholders they had an interest in the property that they had financially supported. The citizens also asserted that once a project, such as the construction or improvement of schools, is approved by and funded by voters it is not up to the Board to make changes to the designated purpose or program.

The citizens sought to ensure that any changes to Millburn's educational infrastructure were pursued through appropriate means, which included seeking approval of voters if there was outstanding debt related to the facility or program. Suit was filed by the local taxpayers to stop the closure of the elementary school.

Issues: At issue was whether the Millburn Board of Education had authority to permit modifications of designated uses of school facilities and whether the Board abused its discretion in closing Washington Elementary School.

Holding: The Court held that while the taxpayers had standing to file suit, the Board was within its scope of statutory authority, and that the Board did not abuse its discretion nor did it act unreasonably.

Reasoning: This case is one that turned not on the facts but rather on the law; therefore, as a matter of law, the court declared that the citizens had standing to file suit and did not have to exhaust administrative remedies prior to doing so (N.J.S.A. 18A: 6-9). The citizens properly filed suit; however, the Court gives attention to the basis of their claims. The suit was filed because the Board wanted to close a local elementary school and lease the facilities for use by the state Department of Education as a site for instruction and education of the hearing impaired. The

Board was not seeking to shut down the elementary school without purpose so as to infringe on the rights of the taxpayers.

The court recognized that New Jersey, at the time of the action, had established law that allowed local boards to make determinations by employing the discretionary powers afforded them. Such determinations included a Board's act of discontinuing use of a public school within the boundaries of its jurisdiction (*Boult v. Passaic Bd. Of Ed.*, 136 N.J.L. 521 (1948); *Schults v. Teaneck Bd. Of Ed.*, 86 N.J. Super. 29 (1964)). Boards were not limited to merely closing school facilities, but were also given statutory authority to sell and/or lease property and real estate subject to statutory restrictions (N.J.S.A. 18A:20-2, 24-76). Based upon state law and state statutes, the court held that the citizens were within their rights to seek judicial review rather than administrative relief, but they also held the Board had acted within its discretion.

Claims asserted by the taxpayers that the elementary school closure infringed on their rights was premised on the idea that the school facility would diminish citizen rights and investments; however, the Board did not intend to cease using the facility entirely but rather to alter the designated purpose. The taxpayers' contentions of adverse impacts and impaired investment were not agreeable to the Court. The decision explicitly states that if bondholders had wanted to restrict future use of the property or facility for which debt was incurred and bonds issued, there should have been a specific covenant in place during the underwriting of such project. Here, the bondholders and taxpayers failed to consider that the Washington Elementary School was only one portion of a larger educational framework that the bonds supported.

Allowing the state Department of Education to lease and operate the facility would actually benefit the school system. The lease provided an increase in revenue without sacrificing the quality of education for students. The use of the property for a hearing handicapped school

was still used for education purposes. Additionally, all uses consistent with the purpose for which the building was built and indebtedness adopted does not inhibit citizen rights or use are decision to be made by a board as a property function of its responsibilities (*Shuster v. Hardwick Tp. Bd of Ed.*, 17 N.J. Super 357 (1952)).

Disposition: The New Jersey Superior Court denied the taxpayers motion for summary judgment and granted the Board's motion to dismiss.

Citation: *Davidson v. Community Consolidated School District 181*, 130 F.3d 265 (U.S.App. 1997).

Key Facts: Two people were among six candidates competing for a school board position. The president of the local Union (Classroom Teacher Association) was the exclusive bargaining representative of the district's teachers. The Union president created a flier that endorsed three of the school board candidates. The flier was then copied at the school and distributed through the district's internal <sup>mail</sup> system. Two of the candidates not endorsed in the flier complained. The candidates claimed that by refusing to allow all candidates to use the internal mail system the district had violated their First and Fourteenth Amendment rights. The candidates brought action against the school board but lost the case in district court and the Court of Appeals.

Issue: The issue in this case is whether a school district's internal mail system is an open forum.

Holding: The District Court and the Court of Appeals ruled in favor of the school district.

Reasoning: The Supreme Court held in *Perry Education Association v. Perry Local Educators Association* that it was reasonable for an elected teachers' union to use the internal mail system to "express its independent view on matters within the scope of its representational

duties.” The normal and intended function of the internal mail system was to facilitate communication. The focus is not on the content of the Union’s communication, but whether the district was justified in allowing the Union to use the system. There is no indication that the school district intended to support one view over another. Therefore, the use of the internal mail system was viewpoint neutral. The court found that the district did not violate the candidates’ Fourteenth Amendment right to equal protection of the laws. In fact, the differential access to the internal mail system was supported by the Union’s obligations as exclusive bargaining representative. The school district did not sponsor or oppose any candidate. They did not allow other candidates to use the mail system. The district permitted the recognized bargaining agent to use the system for internal communication.

Disposition: The candidates were not entitled to use the internal mail system and their First and Fourteenth Amendment rights were not violated.

Citation: *Garnett and Smith v. Renton School District No. 403*, 874 F. 2d 608, (U.S.App. 1989).

Key Facts: Lindbergh High School is a public secondary school. The school district allows use of classrooms during no instructional time by students participating in “co-curricular” activities. The district determines whether an activity is approved based on District Policy 6470, which describes the criteria and also states that the district “does not offer a limited open forum.” Garnett and others requested use of a classroom weekday mornings for the meeting of a Christian student group. The principal and school district denied the request saying that the proposed meetings would violate the Establishment Clause. So, the high school students sought an injunction requiring the school district to allow their religious group to meet. The District Court denied the request for the preliminary injunction. The students appealed the ruling on the

claim that the First Amendment requires that their group be allowed to meet and the Equal Access Act requires that the school permit their group's meetings. The ruling was affirmed by the Court of Appeals.

Issue: Several issues exist in this case. One issue is whether allowing the students classroom use for religious purposes violates the establishment clause. Another issue contemplated was whether the high schools established a limited First Amendment forum, and were the students' free speech rights violated? Finally, does refusing to allow the students to meet on campus violate the Equal Access Act?

Holding: The District Court and the Court of Appeals ruled in favor of the school district.

Reasoning: The Establishment Clause of the First Amendment prohibits states action "respecting the establishment of religion." The actions must pass the "Lemon test" to determine compliance with this clause. The action must have a secular purpose and neither advance nor inhibit religion. Allowing the requested meeting in a time so close to the school day would violate the Establishment Clause. The meeting would have the primary purpose of advancing religion. The Supreme Court has been vigilant in prohibiting the appearance of state sponsored religious activities, especially in public elementary and secondary schools.

There are numerous cases where schools were found to be in violation of the First Amendment and advancing religion. *Illinois ex rel. McCollum v. Board of Educ.* (1948) and *Brandon v. Board of Education* (1980) are two such cases where public school systems were found to be in violation of sponsoring religious groups and therefore permitting what was banned in the First Amendment. Very different results are noted with regard to such activities on college campuses where students have a choice and voluntarily enroll in courses.

With regard to student free speech rights, the district's refusal to allow the group to meet did not violate the free speech clause of the First Amendment. The high school is not a First Amendment limited public forum. In *Hazelwood School Dist. v. Kuhlmeier* (1988), the Supreme Court held,

School facilities may be deemed to be public forums only if school authorities have "by policy or by practice" opened those facilities for indiscriminate use by the general public, . . . or by some segment of the public, such as student organizations. . . . The government does not create a public forum by inaction or by permitting limited discourse, but only by intentionally opening a nontraditional forum for public discourse.

The Renton School District had not opened its classrooms for indiscriminate use by policy or practice. In fact, the district has a policy which states that they do not offer a limited open forum. Because the school district has not created a public forum, they may limit student expression. Organizations connected to the curriculum are given approval to meet. Religious groups have nothing to do with the school district's educational mission and are not granted permission to meet.

The students' claimed that the group should be allowed to meet under the Equal Access Act. The law states that it is unlawful for "any public secondary school which receives Federal financial assistance and which has limited open forum to deny equal access" to any students wishing to conduct a meeting on the basis of religion. Since this high school does not have a limited open forum, these requirements do not apply.

Disposition: The school district's refusal to approve a religious student group to meet was not only reasonable, but required.

Citation: *Ceniceros v. Board of Trustees of the San Diego Unified School District*, 106 F.3d 878 (U.S.App. 1997).

**Key Facts:** The high school in this case is a public secondary school and receives federal financial assistance. All students have the same lunch period and are allowed to leave campus during lunch. A high school student, Cenicerros, requested permission for a religious club to meet in an empty classroom during lunchtime at her school. The school's vice-principal denied her request to use a classroom. Other noncurriculum-related student groups meet during the lunch period. Some of these clubs are the African American African Friends, Hackey Sac, the Movimiento Estudiantil Chicano Aztlan, and the Organization for Nature Conservation. Cenicerros filed suit seeking declarative and injunctive relief and damages for violation of the Act and her rights under Free Speech and Free Exercise of the First Amendment. The district court found in favor of the school district. Cenicerros appealed and the Court of Appeals reversed the decision.

**Issue:** At issue in this case is whether the lunch hour is "noninstructional time" within the meaning of the Equal Access Act and if the school district violated the Equal Access Act.

**Holding:** The District Court ruled in favor of the school district, but the decision was reversed by the Court of Appeals.

**Reasoning:** The Equal Access Act states that it is unlawful for "any public secondary school that receives Federal financial assistance and which has a limited open forum to deny equal access or a fair opportunity to, or discriminate against, any students who wish to conduct a meeting within that limited open forum on the basis of religion, political, philosophical, or other content of the speech at such meetings." The high school creates a limited open forum whenever it grants the opportunity for one or more noncurriculum-related groups to meet on school premises during noninstructional time. This requirement of the Act means that schools must treat student groups fairly. It is the obligation of any federally funded school that opens its facilities to

noncurriculum-related student groups. So, the fact that this high school had allowed other noncurriculum groups to meet and created a limited open forum meant Cenicerros' group should not be denied.

The school district argued that the lunchtime did not fit the Act's definition of noninstructional time. They recognized the time before and after school as noninstructional, but not time during lunch. The Supreme Court in *Board of Education v. Mergens* (1990) held that the Act reflects "a broad legislative purpose" and must be given a "broad reading." Therefore, the Court of Appeals held that the time was indeed non-instructional time, which meant the district had violated the Equal Access Act.

Disposition: The school district's refusal to approve a student's religious group to meet was in violation of the Equal Access Act because the high school was a limited open forum. The Court of Appeals found in favor of the plaintiff. There was no need for the court to address the claims related to Free Speech and Free Exercise.

Citation: *Gernetzke v. Kenosha Unified School District No. 1*, 274 F.3d 464, (U.S.App. 2001).

Key Facts: Two high-school students sued a Wisconsin public school district and two of its administrators. The school invited all of the student groups to paint murals in the main hallway of the school. The Bible Club submitted a sketch for approval that included a cross, Bible, and Bible verse. The principal approved all parts of the sketch except the cross. The principal was afraid that approving such a Christian symbol would invite lawsuits and might require him to allow murals with Satanic or neo-Nazi symbols. The students charged violations of their constitutional and statutory rights to religious freedom. The students sought damages and

injunctive relief. The case was heard in District Court and the ruling was for the defendants. The plaintiffs appealed. The Court of Appeals affirmed the District Court's decision.

Issue: At issue in this case is whether the principal was acting as the final decision-making authority and whether he violated the Equal Access Act.

Holding: The District Court and the Court of Appeals held that the administrators (principal and superintendent) were insulated from liability under the Equal Access Act.

Reasoning: The court established that the principal and superintendent did not have final decision-making authority. The two administrators were acting within the scope of their official employment. In order for the plaintiffs to prevail, they would have to prove that the district itself was directly responsible for the deprivation. Because final decision-making authority rests with the school board, the plaintiffs would have to prove that the school board committed the alleged violation of the plaintiff's rights. In addition, the principal's decision to forbid the display of the cross was protected from liability under the Act by the provision that "nothing in [the Act] shall be construed to limit the authority of the school . . . to maintain order and discipline on school premises" (20 U.S.C. § 4071(f) (1980)). The principal was attempting to maintain order and discipline.

Disposition: The Court of Appeals heard the case and upheld the decision of the District Court.

Citation: *Board of School Directors of Caldwell Parish v. Meridith*, 140 La. 269, 72 So. 960 (La. 1916).

Key Facts: Pine Grove Academy, in the parish of Caldwell, was established by the Legislature in 1838. Fifteen people were at the same time named as a corporate body known as the Trustee of the Pine Grove Academy. The trustees' job was to handle administration of the

school for the benefit of Caldwell Parish. In 1860, the Legislature amended its earlier act that established Pine Grove Academy. The amendment set out the expiration of the corporation's charter in 1885 and the only people interested in such amendment were the Caldwell Parish citizens; however, no one ever set out to have the corporation liquidated or the charter renewed. The board of directors of the public schools of Caldwell Parish, upon discovering that certain school property had been sold, brought suit against Louisiana Central Lumber Company to try and recover the property. However, the court held that the board of directors lacked standing to bring suit as the Legislature has not given them authorization to do so.

On June 11, 1915, the General Assembly of Louisiana passed Act No. 24 of the Extra Sessions of 1915. Act No. 24 declared, in part, that the corporation previously known as the trustees of Pine Grove Academy to be out of existence. The Act also required that the corporation be liquidated and set out rights to seek judicial intervention to accomplish this. When the board of directors of public schools attempted to begin the process of liquidating the Pine Grove Academy, the trustees claimed they were the rightful and designated liquidators. In response, the board of directors of public schools filed suit seeking judicial liquidation of the affairs of the corporation and further requesting that all assets be distributed to benefit the inhabitants of Caldwell parish and the educational system.

Issue(s): At issue was whether the Trustees of the Pine Grove Academy, a corporation created by the Legislature, were the liquidators at the time the corporation dissolved and whether the Trustees has any claim to the property held by the corporation.

Holding: The court held that upon the appointment of a judicial liquidator and dissolution of the corporation, the Trustees of the Pine Grove Academy held no interest or claim to the property of the corporation.

Reasoning: Both parties agreed that at the time of this action the trustees of the Pine Grove Academy had been dissolved and was no longer in existence as a corporation. The former trustee claimed that they had been appointed by the Legislature at the time the corporation was organized and that as such they were entitled to the property of the corporation. The trustees argued that the neither the state, nor any other party, should be given property owned by the corporation.

The trustees of the Pine Grove Academy possessed property, money, and credits at the time the Legislature passed Act No. 24 and the trustees claimed to have title to all such property. The Court held that the Legislatures passage of Act No. 24, to compel liquidation of the corporation known the Pine Grove Academy, was clear to support the intent that any such property held in a public corporation the one at issue, be disbursed for educational use or that proceeds received from same be reinvested into the community. Ultimately, the court held that no private person can, by title alone, make a claim to what is essentially property of the public as a whole.

Disposition: The Supreme Court of Louisiana affirmed the holding of the Thirtieth Judicial District Court, Parish of Caldwell ordering that a judicial liquidator be appointed and denying the defendants motion to dismiss.

Citation: *State ex rel. Miller v. Board of Education of Consolidated School District No. 1 of Holt County*, 224 Mo. App. 120, 21 S.W.2d 645 ( Mo.App. 1929).

Key Facts: The Consolidated School District of Holt County was organized in 1913. Several years later, during 1924, the school board closed two of the existing elementary schools and moved the students to another location. The school closures were in response to petitions submitted by citizens seeking a new elementary school in better condition than the current

schools. Local residents and taxpayers wanted the two schools located in the outlying areas of the community to be reopened and properly maintained. The school board asserted that one reason for the closure was the attendance of less than 10 students at each location. The residents filed suit seeking a writ of mandamus to reopen and reestablish the two schools that were closed. The citizens claimed the school board lacked authority to do such a thing and the civil action followed.

Issue(s): At issue was whether the closure of the two elementary schools based on previous attendance records, without opening them for a new school year, was proper and necessary to offer adequate places for educational instruction.

Holding: The Court held that the board of education closed the schools based on the expense of repairing and operating the older schools and that the board's decision to avoid opening the schools and incurring the expense of teachers and staff was one made within its discretion.

Reasoning: The Court considered whether the board of education had made adequate investigations prior to closing the two elementary schools at issue. The Court determined that there had been sufficient efforts made to determine the predicted attendance rate for the upcoming school year as well as the costs associated with operating and maintaining the school. The Court held that based upon the records and the fact that there would have been 10 or less students at each such location, the school board was justified in its decision. Further, the costs of employing teacher and janitorial staff would have cost more money, which could have been used to improve one central district school.

The citizens alleged that the board was required to at least open the school for the new school year to see what kind of attendance they would have. However, the court held that the

board was not required to open the schools. The court elaborated on the fact that opening the schools would have been more of a resource drain on the school district than a benefit. The board's right of action to close the schools with less than 10 students was pursuant to Revised Statutes 1919, section 11260. The statute was not put in place to nor can it be construed to require the board to take useless and wasteful steps such as opening the school with no ultimate purpose other than closure. The board was determined by the court to be within the boundaries of its discretion and duties when it closed the two schools. The conditions were not adequate to facilitate the education, health, safety, or well-being of the student and promoting these key things is the underlying purpose of the board of education.

Disposition: The Court of Appeals of Missouri, Kansas City Division, reversed the writ of mandamus, which was issued by the Circuit Court of Atchison County and ordered the reopening of schools by the board of education.

Citation: *State v. Board of Education of Cleveland City Sch. Dist.*, 88 N.E. 2d 808 (Ohio App. 1949).

Key Facts: The Plaintiff brought this action on behalf of himself and other taxpayers of the district to determine the legality of a lease entered into by and between the Board of Education of the City of Cleveland and the County Welfare Board. Pursuant to the lease agreement, the Board of Education granted to the Welfare Board the right to use the north wing of Tremont Public School for use as a receiving home for neglected children for a term of 5 years, and to remodel the north wing to render it suitable to be used as a receiving home at a cost of \$30,000.00 (*State v. Board of Education of Cleveland City Sch. Dist.*, 88 N.E. 2d 808 (Ohio App. 1949)).

Issue: Did the Board of Education have the authority to lease a portion of a school building for uses other than school purposes, considering that the premises in question will not thereafter be available for any school purpose?

Holding: The Court held that it is incumbent on the Board of Education while holding title to the property to preserve its availability for school purposes where a present, probable, or future need therefore exists or is likely to arise.

Reasoning: In reaching their conclusion, the Court noted that, “nothing in the record indicated that the leased portion of the school would no longer be needed for school purposes in the foreseeable future or within the period of the lease.” The Court also agreed with the Plaintiff’s assertion that the adoption of the north wing to a receiving home would seriously impact, if not destroy, its availability thereafter for school purposes.

The Court applied the following law to the facts in this case:

The Board of Education of each school district shall be a body politic and corporate, and, as such, capable of suing and being sued, contracting and being contracted with, acquiring, holding, possessing and disposing of real and personal property, and taking and holding in trust for the use and benefit of such district, any grant or devise of land and any donation or bequest of money or other personal property and of exercising such other powers and privileges as are conferred upon it by law. (Gen. Code, §4834, 1938)

In applying the foregoing statute to the limited facts at hand, the Court determined that the Board of Education was not authorized to lease the building’s north wing to the Welfare Board. “Where a Board of Education leases a wing of a school building to another public agency for an extended and definite term, and authorizes the lessee to make structural changes in the leased portion of the building at the lessee’s expense, it cannot on these facts alone, successfully maintain that it has acted within the scope of its statutory authority” (*Id* at 810).

Citation: *Sugar v. City of Monroe*, 59 L.R.A. 723, 32 So. 961 (La. 1902).

Key Facts: Citizens and taxpayers of the city of Monroe, Louisiana, voted and approved a tax the purpose of which was for public improvement that included construction of a high school and adjacent auditorium. Citizens found out that the auditorium had been leased to a local man who was using the premises for an entertainment theatre. It was discovered that the theatre was being used for entertainment and theatrical performances on weekends and evenings. Though the buildings were used as a theater during times that did not affect or interrupt school activities, the cost of insuring the building had increased due to the use as a theatre. Upon finding out the news of the lease and use to which the auditorium was being put, citizens filed suit seeking to have the lease voided. The taxpayers who voted to tax themselves for such a project had standing to bring such an action and did so in complaint that the property acquired is not being used for the intended purpose for which it was constructed. The auditorium was constructed with money from taxes and additional funds; thus, the City has taken public property and converted it to private use.

Issue: At issue was whether the City of Monroe has the right to make use of an auditorium originally constructed to be used for school purposes, but which was being used for private gain and entertainment.

Holding: The Court held that the city was in error when it leased public property, maintained for use by the local school, to a private party.

Reasoning: The court gave specific attention to certain facts of this case. Primarily, the citizens of Monroe voted to impose a higher tax upon themselves in order to complete and maintain a nice high school and auditorium. While the court recognizes that future changes or a shift in conditions could possibly lead to leasing the auditorium, the city did so this time under a

cover of deceit. The taxpayers had accepted the school board's reassurance that the money collected would be used for constructing and maintaining school property; however, the city entered into a lease allowing private control of public property of the schools, and did so without permission from any voters or taxpayers.

The City of Monroe was operating the public school auditorium as a business. The Court held that the city did not have a legal right to lease the premises and enter into such an agreement regarding the use of the school auditorium.

Disposition: The Supreme Court of Louisiana reversed the decision of the judicial district court, parish of Ouachita, and found on behalf of the citizens and taxpayers of the city of Monroe.

Citation: *Kiddie Korner Day Schools, Inc. v. Charlotte-Mecklenburg Board of Education*, 55 N.C. App 134, 285 S.E.2d 110, 1 Educ. L. Rep. [972] (N.C.App. 1981).

Key Facts: The Charlotte School Board initiated and began operation of an after-school daycare program that would reduce the number of students left without supervision between the end of school and the time their parents come home from work. The students had the option of doing homework, playing sports, or taking part in artistic activities until they were picked up at the end of the day. The program was open to all enrolled students of Dilworth Elementary School.

The program cost for participating families was \$15.00 per month, which covered all expenses, thereby making it a self-sufficient program. The Day Enrichment program was fashioned after a similar program in another city. The Board provided use of the Dilworth Elementary School building to accommodate the program and also provided the related utilities.

However, the cost of lights and water are finite and none of the staff members were paid by the school board for their work.

Kiddie Korner Day Care School, Inc. was a privately owned and operated daycare. Other private daycare providers joined together and filed suit seeking to enjoin the continued advancement of the DEDE program.

Issue: At issue was whether the program constituted a daycare program, whether it violated the Constitution, whether the school misappropriated public funds, and whether the program violated the personal, professional, and property rights of the many plaintiffs.

Holding: The Court held that the school board operated the DEDE program within the constitutional and statutory authority vested therein, had the authority to operate it without voter approval, did not violate any personal or property rights of the plaintiffs, and that the program satisfied the public purpose doctrine thereby making any costs to the school system permissible.

Reasoning: Distinguishing between private and public interests are often intertwined so tightly it is difficult to determine which is dominant. The Court recognized this case as one where the higher purpose has to be highlighted. The plaintiffs claimed the school board lacked both statutory and constitutional authority to operate the after-school program. However, the Court reinforced that the Constitution requires all expenditures of tax dollars be for public purposes (*Nash v. Tarboro*, 227 N.C. 283, 42 S.E.2d 209 (1947)).

The program satisfied the public purpose doctrine, thereby satisfying any questions regarding expenditure for related costs. The court opined that both the Constitution and designated statutes declared the education of the citizens to be the goal of the education system. The students enrolled in the program were given opportunities to maximize their abilities and take part in educational opportunities, thereby satisfying the prime objective of the education

system as a whole. The program was beneficial not only to the individual participants but offered benefits that would also impact the community interests and estates of the public (*Mitchell v. Financing Authority*, 273 N.C. 137, 144, 159 S.E.2d 745, 750 (1968)).

With regard to the plaintiff's argument that the school board lacked authority to maintain involvement with the program, the court explained its interpretation of the legislative scheme for public education. The court acknowledged not only the responsibility of local entities to carry out basic education programs, but also to consider the needs of the community and work to incorporate programs to meet those needs. DEDE did just that. The Community Schools Act laid the foundation for schools to allow greater input from the community and to allow greater use of public school facilities to meet those needs.

In response to the plaintiff's allegations that the program violates the guidelines for free public education, as set out in the Constitution, the court held that under *Sneed v. Board of Education* (299, N.C. 609, 264 S.E.2d 106 (1980)), there is no constitutional requirement that public education be completely free. The court acknowledged the fees for tuition associated with the program; however, they clarified the fact that the tuition is for the purpose of covering the costs of the program, which the court called a "supplemental educational education experience." Thus, since the program is not part of a basic public education, the DEDE program is in no way infringing upon the students acquiring a free public school education.

Lastly, the plaintiffs claimed the program was unauthorized competition. However, the court held that the plaintiff had no vested property rights in providing daycare after school for the children of the specific school district at issue. Further, the court held that the plaintiff's were not entitled to recover any attorney's fees associated with the litigation as such costs are assumed risks that each party takes.

The DEDE program was properly implemented as part of the public school education opportunities in the district. The school board acted within its discretion when choosing to move forward with the program and has not violated any laws and or regulations during the management of the program.

Disposition: The Court of Appeals of North Carolina upheld the judgment entered by the Superior Court, Mecklenburg County, which granted the board's motion for summary judgment and dismissed the case.

Citation: *Bredeck v. Board of Education of City of St. Louis*, 213 S.W.2d 889 (Mo. App. 1948).

Key Facts: Joseph F. Bredeck was the Health Commissioner of the city of St. Louis. He was charged with specific duties as outlined under the Charter of the City of St. Louis. One such duty was his surveying and grading of restaurants to see whether each business complied with the requirements and guidelines set out regarding sanitation and safety. The Board of Education of the City of St. Louis operated approximately 128 public schools throughout the city, and 42 of the schools maintained restaurants and/or cafeterias. Bredeck requested permission to inspect and grade the premises of the 42 school restaurants and/or cafeterias which were fully operational and serving food to students on a daily basis.

The 42 schools operating kitchens had failed to file the necessary applications and paperwork for permits required to operate as food preparation businesses. The schools' refusal to allow Bredeck to view, inspect, and asses the food preparation areas was based on the schools' contention that Bredeck had no authority to inspect or grade the school restaurants.

Bredeck asserts that it is his job to make sure the school children are being fed from a kitchen preparation area that is sanitary and meets the entire criteria essential to maintain public

health and safety. The board argued that the statutes that set forth the requirements to operate such lunchrooms also act as exemptions from municipal regulations as school control themselves in such matters as lunchroom operation. Based on the board's continued refusal to submit to inspections and obtain the required permits, Bredeck filed suit.

Issue: At issue was whether the Board of Education fell outside the scope of the city ordinance regarding health inspections of restaurants and whether the schools would have to submit to the inspections or be self-governing in this area.

Holding: The Court held that the board and schools in the St. Louis area were not exempt from ordinances that regulated restaurant and/or cafeteria health. Additionally, the court held that the schools were subject to inspection and approval for the required permits for food preparation and food sales.

Reasoning: The board refused to allow Bredeck, acting as a municipal officer of the City of St. Louis, to inspect the lunchrooms and cafeterias in use in approximately 42 area schools. The board contended that the power to regulate and enforce restrictions was vested within the board itself; therefore, the schools were exempt from inspections and the act of acquiring permits to operate as a restaurant.

The ordinances of the City of St. Louis outlined requirements for food safety, sanitation, food wholesomeness, infestation, proper preparation, and storage. The ordinances are in effect to maintain public health and safety; however, since school boards are essentially self-contained political entities, the school felt that the self-regulation of school property extended into the lunchroom. The grant of power to the city by provisions set out in the charter is a broad grant. If an ordinance is in harmony with the laws of the state it must be held to be a proper exercise of

the police powers conferred by charter upon the City of St. Louis (*City of St. Louis v. Kellmann*, 295 Mo. 71, 243 S.W. 134 (1922)).

In *Kansas City v. Fee* (174 M. App. 501 (1913)), and *Kansas City v. School District of Kansas City* (356 Mo. 364 (1947)), the source of contention was whether or not the schools were subject to municipal ordinances. These two cases dealt with the schools' obligations to honor code policies regulating burning furnaces and heating alternatives. In these two cases, the court determined that since the states had taken no initiative to regulate such items, the municipal and/or city regulations were to be applied to everyone. Further, the court found that the schools would be the entity that would exhibit the least likely amount of police power as that was vested in the municipal government.

It must be generally accepted and recognized that police powers of the city usually extend to all that are included or encompassed within it. The school board did not make any declarations that the ordinance itself was unreasonable. The board claimed that lunchrooms were under the specific control of school boards as are other items that are internally regulated. However, by outlining the fact that municipalities regularly and customarily exercise control and regulatory powers over everything and everyone contained in the municipality, the court seems to be reminding the board that cooperation is inevitable. However, the power of the municipality extends to things determined to be within the scope of municipal regulation, such as operating a lunchroom. Therefore, the court held that the school was subject to the municipal regulations, inspections, and grading conducted by the designated municipal office.

Disposition: The St. Louis Court of Appeals, Missouri, reversed the judgment of the St. Louis Circuit Court, which included reversing the granted motion to dismiss. The case was remanded with specific directions.

## Case Briefs Concerning the Disposition of School District Property

This section provides an analysis of court cases involving disputes over the disposition of school district property. The cases in this category were selected from West's Education Law Digest school district property category and key number 365 (Schools). The cases examined span both subtopic and date. Subtopics include disputes regarding school closures, the declaration of properties as surplus, abandonment, reversionary clauses, and leasing or sale of said properties along with the receipt of appropriate consideration for related transactions.

Citation: *Ator v. Owasso Independent School District* 146 P.3d 821 214 Educ. L Rep. [825] (Ok.Civ.App. 2006).

Key Facts: The Owasso Independent School District received 7 acres of land from Thelma Ator as a gift for the purpose of providing an area for the football program. The gift was made in 1950. The giftor and her spouse subsequently passed and purportedly left her son as sole heir. A warranty deed and an associated written agreement established that the property was to be used expressly for the football program. The district ultimately constructed a stadium and practice field on the aforementioned property and used it in accordance with the stipulations set forth in the gift. In 2001, the district ceased to use the property as its stadium and began to use it as a practice field. However, they simultaneously began to allow a private youth football club to utilize the property for non-school-related football events. In addition, the school district granted a road easement to the city of Owasso. In October of 2003, the surviving son, Field Ator, filed a petition claiming ownership in said property based on terms established in the original conveyance documents.

Issue: Did the school district comply with the terms established in the original conveyance as it relates to exclusive use of said property for the football program.

Holding: The trial court's finding was upheld and certiorari denied.

Reasoning: The Court of Civil Appeals set aside the argument proffered by the district, which indicated the field used by the private club was congruent with the original intent of the agreement. And as a result of the club's use of said property, the district's football program ultimately benefited since many of the players matriculated to the district team. Secondly, the court concluded the specificity of the language of the 1954 conveyance left a prescriptive remedy should the district deviate from the agreed upon use of said property. That is the immediate reversion of said property to the estate of the previous owner.

Citation: *School Dis. No. 1, Multnomah County v. Multnomah County*, 164 Or. 336, 101 P.2d 408 (1940).

Key Facts: This suit was filed by School District No.1, Multnomah County, in which they petitioned the court to vacate the conveyance of a parcel of land and existing improvements to the Multnomah County governing authority. The property in question was transferred to the county after a plea was made to the school district indicating said transfer was a precondition and the only barrier to acquiring federal funds to enlarge the National Guard armory situated on a parcel immediately adjacent to the property in dispute.

Issue: Should the conveyance of school district property be nullified if the receiving party fails to meet all of the conditions of a state statute requiring such property to be used for public purposes.

Rule: The Oregon laws of 1935 Section 1, of chapter 138, p. 211, establishes the authority for a government body to relinquish title of property to another governmental body so long as such property continues to be used for a public purpose.

Holding: The circuit court's finding was in error and the circuit court's decree was reversed.

Reasoning: The court held the trial court's decision should be overturned due to Multnomah County's failure to meet a precondition of such conveyance established in Oregon statute, which requires public property to be used for public purposes. The court reasoned that both parties acted within the scope of their authority, making any argument to the contrary moot. It further reasoned that the school district conveyed said property with the express intent to assist the county in meeting the public's need for a new and larger National Guard armory thereby making the conveyance in question valid within the parameters established in existing law. The court also concluded that the grantee of said property failed to utilize the conveyed property for public purposes, given that no progress was made in the 7 years that followed the conveyance. The court determined this to have been ample time to make progress toward the construction of the facilities described in the conveyance and that the county therefore failed to meet the conditions relating to the intent of the transfer and applicable in Oregon law.

Citation: *Moss v. Crabtree*, 18 So. 2d, 467 (Ala.1944).

Key Facts: Defendant Crabtree and his wife conveyed to the trustee of Oakgrove School .50 acres, with the understanding that said parcel should be used for school purposes only. Should the property cease to be used for school purposes only, then it would revert back to the larger 40 acre tract from which it was taken. The aforementioned property would also revert back to the larger parcel should one R. A. Ellis become a trustee of the school. After the conveyance to the school, the Crabtree's conveyed the larger 39.5 acre tract, and eventually the Complainant Moss acquired title thereto. The Complaint was filed alleging that the Complainant had equitable

title only, and that the Defendant was now in possession of the 1 acre parcel. The school trustees filed an answer disavowing any claim or title to the .50 acre tract.

Issue: Was the reversionary clause attached to the larger tract of property indifferent to subsequent conveyances.

Rule: The condition contained in the deed that “should the land cease to be used for school purposes the above tract would revert back to the 40 acre tract from which it was taken” was not an exception or reservation to the grantor, but was a condition subsequent and a covenant, by its terms, running with the land and the estate conveyed, and grantor’s successor in estate by subsequent conveyances could claim the benefit of the abandonment of the land by the school trustees.

Holding: The Court affirmed the trial court’s finding that the .50 acre reverted back to the tract to which it was taken and not back to the original grantor.

Reasoning: The Court held that the condition embodied in the deed was a condition subsequent that ran with the land, and not a reservation in the original grantor; that upon the happening of the condition, the property would revert back to the larger tract. When the school board abandoned the property, it once again became part of the larger tract, and the then owner, or successor in estate, could claim the benefit of the school board’s abandonment.

Citation: *Boyd v. Ducktown Chemical & Iron Co.*, 19 Tenn. App. 392, 89 S.W.2d 360 (Tenn.App. 1935) *cert. denied* 1936.

Key Facts: The heirs of a deceased landowner brought an action in which they sought to recover an acre of land that had been reserved by a decedent for cemetery burial plots and where the decedent had been buried. In 1894, the courthouse of Polk County Tennessee, burned and all records were destroyed. The heirs did produce an abstract showing the acre in question; however,

in subsequent deeds the one acre was reserved for a meeting house or schoolhouse but there was no mention of a graveyard. The heirs sought to restrain Ducktown Chemical & Iron Company from mining, working, or removing any ores from the land. The heirs further claimed that the small part of the land where the decedent was buried had been conveyed conditional upon its use. The deed to commission for the purposes of worship and education did not contain a provision for reverter if the specified land use ceased.

Issue: At issue was whether the heirs of the deceased could recover the acre when a subsequent deed passed title to the entire tract including the reserved acre.

Holding: The court held that the at the time of execution of the deed conveying the property as a whole, there was no school, church, or meeting house on the land and the reversion did not apply to the acre sued for.

Reasoning: The heirs of the decedent alleged that they held title to one acre of land conveyed to Ducktown, based upon language in deed conveying for purpose of being used for education, meetings, or worship. However, the heirs claim to a reversion of the acre in question was defeated because the deed contained no provision for reverter.

The court in *Ramsey v. R. Co.*, 3 *Tenn.Ch.* (170 (1935)), held that it was well settled that a mere expression of a general purpose in such a conveyance was not constituted to create a condition that would work a forfeiture for cessation of the use specified. Further, such conditions, when relied on to work forfeiture, must be created by express terms or clear implications and are strictly construed (*Id.* at 175). The court expressed that the rule for establishing the existence and location of excluded land is such that the burden is on the party claiming adversely to the deed.

If there is no description of the excluded land appearing in the deed, there is no excluded territory until the evidence establishes the fact. The court held that the heir's claims that the acre of land was given for conditional uses of schoolhouses and worship services could not be substantiated. Therefore, the court did not recognize their claims to the acre of land in dispute.

Disposition: The Chancery Court of Polk County sustained all defenses presented and sustained the bill. On appeal, the Court of Appeals of Tennessee, Eastern section, affirmed the judgment of the lower court.

Citation: *Dick v. Darden*, 85 So. 369 (Ala. 1920).

Key Facts: In 1858, Lee Shaver, the father of the Respondent, executed a deed to the then school trustees wherein he expressly reserved to himself the reversionary interest in the land and when its use for school purposes should be abandoned. The Respondent claimed to have a conditional interest in the land, and Darden and others, as trustees of the Pine Level School, brought this action to quiet title. The trustees and their predecessors had been in possession of the property in question for 60 years, and the deed that was purported to contain the reversionary interest could not be produced at trial even after a due search was made.

Issue: Can secondary evidence be used to establish a reversionary interest in the grantor when the deed containing that reversionary interest has been lost, and no witness can testify to any attestation or acknowledgment appearing on the face of the lost instrument.

Reasoning: The Court opined that the grantor's widow sufficiently and clearly described the material substance of the lost deed in her testimony. The alleged deed, being more than 30 years old, would have been admissible without proof of its execution if the writing itself had been produced (*Alexander v. Wheeler*, 78 Ala 167 (1884)). And where the deed is lost and its contents are proven by secondary evidence, that rule is equally applicable (*Beall v. Dearing*, 7

Ala 124, 128 (1844)). The Court further reasoned that even though the witness could not testify to any attestation or the deed, the lack of testimony of attestation had no effect on the reversionary clause, though it may have rendered the deed defective as a grant of legal title. However, considering the testimony in support of the deed, the Court determined that the Respondent was the owner of an interest in land which will vest in her as an estate in fee simple whenever the land shall cease to be used for school purposes in accordance with the grant.

Holding: The Court reversed the judgment of the trial court holding that the Respondent was the owner of an interest in the land which will vest in her whenever the land shall cease to be used according to the terms of the grant.

Citation: *Boutwell v. County Board of Education of Escambia County*, 12 So. 2d 349 (Ala. 1943).

Key Facts: The County Board of Education of Escambia County brought this suit of unlawful detainer against the Defendant for the recovery of a small tract of land on which sat a schoolhouse. The land was deeded to the Board, sometime prior to this suit, from the Defendant's father. That deed contained a reverter of title to the grantor "should the property cease to be used for public school purposes." The evidence presented showed that the grantor solicited the Board for a key to the school so that a minister could use the building during the summer months. Sometime prior to the beginning of the following school year, the grantor deeded the property to the Defendants. The effort of the Defendants was to show that the school had ceased use, and the property had reverted to the grantor pursuant to the deed. At trial, the Defendants attempted to introduce the deed into evidence in order to make a claim of title; however, the trial court denied the introduction of the deed.

Issue: In an action of unlawful detainer, can a deed be produced to make a claim of title?

Rule: Title 7, §975, Code of 1940: The estate or merits of the title cannot be inquired into on the trial of any complaint exhibited under this chapter.

Holding: Here the Court affirmed the trial court's judgment.

Reasoning: The Court reasoned that while deeds may sometimes be admitted to show the extent of one's possession that was clearly not the purpose for which the Defendant sought to introduce the deed here. The Defendants hoped to have the deed admitted solely to show a reverter of title, in order to prove that the Defendants had property title to the property. "The possession at the time of intrusion is the only matter that is permitted to be the subject of investigation. All questions as to the ultimate title or as to right of possession, as distinguished from actual possession, are excluded . . ." (*Dent v. Stovall*, 200 Ala 193 (1917)). Here, the school was in possession of the property at the time of intrusion, and thus the Defendants were unlawfully detaining the School Board property.

Citation: *Prescott Community Hospital Commission v. Prescott School District No. 1*, 115 P. 2d 160 (Ariz. 1941).

Key Facts: The Defendant is a school district covering Prescott and the surrounding area. Within that area, the Defendant owned a red brick schoolhouse known as the Jefferson School. The Plaintiff is a legal entity organized for the purpose of maintaining a hospital in the City of Prescott. The Defendant leased to the Plaintiff the Jefferson School. The term of the Lease was for 5 years at an annual rate of \$1.00. Per that lease, the lessee was granted the privilege of renewing the lease for periods of 5 years each for an infinite period. The lessee was charged with maintaining the premises; however, the only condition upon which the lessor could terminate the lease was if the premises were totally destroyed. The Plaintiff petitioned the Court for a declaratory judgment determining the validity of the lease.

Issue: Was the lease of the Jefferson School to the Hospital Commission for a 5-year term at an annual rate of \$1.00 a valid lease?

Holding: School districts are not permitted to give away the property of a district even for the most worthy purpose, and since it appears clearly by the terms of the lease that was the intention of the school district, the Court held the lease to be ultra vires and void. The judgment of the trial court was affirmed.

Reasoning: The Court reasoned that by looking through the form of the lease to the substance, it was evident that the lease was not meant for the benefit of the school district, or for both parties, but that the lease in question was meant for the benefit of the Hospital Commission entirely. The Court actually stated that when reading the terms of the lease for what they were, it appeared as if the district was essentially giving the Hospital Commission the schoolhouse. The Court applied the following law to the present facts:

School districts are created by the State for the sole purpose of promoting the education of the youth of the state. All their powers are given them and all the property which they own is held by them in trust for the same purpose, and any contract of any nature which they may enter into, which shows on its face that it is not meant for the educational advancement of the youth of the district, but for some other purpose, no matter how worthy in its nature, is ultra vires and void.

In the given case, the Court determined that even though the maintenance of a hospital was a “most praise-worthy objective,” because the youth in the district derived no benefit from the lease, it cannot be a valid lease.

Citation: *Mahoney v. Board of Education*, 12 Cal. App. 293 (Cal.App. 1909).

Key Facts: This action was brought to restrain the Board of Education of the city and county of San Francisco from leasing certain premises dedicated to public school purposes. The facts are that in 1858 the City and County Commissioners, upon the authorization of the Legislature, conveyed a piece of property known as the Lincoln School lot to the Board of

Education, in trust to and for the use of the public schools in the city and county. That conveyance was approved by an act of the Legislature, and the title to the property was confirmed in the Board of Education to be used as a site for a schoolhouse. The Board of Education entered in negotiations with a third party to lease the property for a term of 35 years, and to be devoted to purposes foreign to those contemplated by the dedication.

Issue: Did the Board of Education have the power to devote the property to any other use than that to which they were dedicated?

Holding:

The land in question, by an act of the Legislature, was held by the board of education in trust, to and for the use of public schools in San Francisco, and was subject therefore as we have just seen to be diverted by the Legislature from such purpose, and the leasing of the property by the Board of Education as proposed, it is conceded, would be a diversion of it from the use to which it was dedicated; but, as it would be under a provision of the charter approved by the Legislature, it would in effect be by the direction and under the authority of the Legislature, and hence, valid.

Reasoning: The Court cited the following law in support of its holding. When land has been dedicated to a definite and specific purpose by grant or devise, it is well settled that the property cannot, without the consent of the grantor or devisor, or his successor in interest, be used for any other purpose (Dillon on Municipal Corporations §650 (1902)). When the dedicated property is situated within a municipality, but is set aside and reserved by the state for certain purposes, the municipality has no authority to divert the property from such purposes. But the right of the state to do so is unlimited, unless there are contract restrictions, or private rights of an abutting owner or other person involved. The property itself is a trust, and the Legislature is the prime and original controlling power, managing and directing the use, disposition, and direction of it (*Brook v. Horton*, 68 Cal. 555 (1886)). In this case, the Board acted in accordance with a provision of the City Charter that empowered the School Board to lease to the highest bidder, for

the benefit of the school fund, any real property of the school department not required for school purposes. This subdivision of the City Charter was approved by the Legislature. The Board of Education was essentially acting on behalf of the municipality and under the authority of the Legislature. The lease made under the permission of the City Charter was as effective as if the Legislature on its own initiative had directed the Board to execute the document.

Citation: *Harvey v. Board of Public Instruction for Sarasota County*, 133 So. 868 (Fla. 1931).

Key Facts: The board of public instruction of Sarasota County proposed to convey a portion of a piece of property to the United States of America for the erection of a post office; although, the United States of America was going to pay nothing for the property. The trial judge upheld the conveyance upon the theory that by building a \$175,000.00 structure on the piece of property conveyed, the United States of America would actually enhance the value of the remaining property owned by the school board. For this reason, the trial judge ruled that there was adequate consideration for the transaction.

Issue: Was the anticipated increase in property value resulting from the construction of a post office on the conveyed property lying adjacent to the school board's adequate consideration received therefore?

Holding: County board of public instruction may not convey school property, where the only consideration is enhancement of value of other property retained by the board.

Reasoning: Under Section 561, Comp. Gen. Laws 1927, §454, Rev. Gen. St. 1920, the board of public instruction has power to obtain possession of, accept, and hold, under proper title, as a corporation, all property possessed, acquired, or held by the county for educational purposes, and to manage and dispose of the same for the best interest of education, but this did

not authorize the board of public instruction to convey a portion of the school property to the United States without consideration for the purpose of using it to erect thereon a post office building, on the theory that where only a part of the land owned by the board was to be so conveyed, the balance to be retained for educational purposes, and that the proposed expenditure of a large sum of money for the erection of the post office on the property conveyed, would, through enhancement of the value of the property retained, constitute adequate legal consideration for the conveyance. The board of public instruction holds the property in trust as trustees for the citizens and taxpayers of the county, upon whose taxes may have been levied to purchase said property, and the business affairs of the board should be conducted with this in mind. The board, thus, has a duty to dispose of this trust property only upon adequate consideration received, therefore, and consistent with good business judgment and sound business principles. This Court reversed the trial court and stated “that the conveyance should be restrained until a full, fair, and adequate consideration is received.”

Citation: *Rustin v. Butler*, 24 S.E. 2d 318 (Ga. 1943).

Key Facts: Plaintiffs are the trustees of the Willie School district, and as such have title, ownership, and control over the school property within their district pursuant to the laws of the State of Georgia. M. C. Rustin and J. J. Futch (Defendants) executed and delivered a deed to a piece of property to the school district. That deed contained a provision stating that,

the above granted premises is for the purpose of building a schoolhouse on the same, and should the same not be used for school purposes, the title thereto is to revert back to the said parties of the first part or their heirs and assigns.

The evidence showed that following delivery of that deed, a school was built on the property.

Years later, the school was closed, and moved elsewhere in the district. Some years later,

following the school’s closing, the Defendant re-entered upon the land and began to remove the

building. Plaintiffs brought this action to enjoin him. The trial judge, in construing the deed, held that absolute title had vested in the petitioning trustees, and that the grantors had no right of reversion.

Issue: Did the deed in question give the trustees absolute title, or did the grantors reserve a right of reversion?

Holding: An express conveyance of land to school trustees “for the purpose of building a schoolhouse on the same, and should the same not be used for school purposes, the title thereto is to revert back to the grantors or their heirs and assigns,” will be construed as granting the property on a condition subsequent; and upon breach of such condition by the grantees, the grantor has a right of re-entry.

Reasoning: The Code of Georgia, §85-902, provides: Conditions may be either precedent or subsequent. The former require performance before the estate shall vest; the latter may cause a forfeiture of a vested estate. According to the facts at hand, the Court believed that the intention of the grantor, as gathered from the language of the instrument, must necessarily be taken to be that the voluntary conveyance was not only conditioned upon the grantees building a schoolhouse, but that the conveyance also expressly limited the use of the land and thereby passed title only for school purposes. Not only did the grantor require a condition that a schoolhouse be erected, he expressly provided for a forfeiture should the land no longer be used for school purposes. The Court stated that there are no precise words needed for the creation of a condition subsequent, and that the construction must always be founded upon the intention of the parties as disclosed in the conveyance.

The Court stated that when the trustees took over the property and built the school on it, that in itself would amount to an appropriation of school purposes, and if such initial action were

sufficient to vest absolute title in the trustees, what additional purpose would be served by adding the words, “and should the same not be used for school purposes, the title thereto is to revert?” The Court further stated that the language in the deed could have been worded more clearly, but that the expressed intentions of the grantor were reasonably clear, and that the express forfeiture prescribed by the condition subsequent should be given effect. Judgment of the trial court was reversed.

Citation: *Kennedy v. Kennedy*, 183 Ga. 432 (1936).

Key Facts: J. J. Kennedy made an oral gift of the one acre tract in question to the trustees of the Fairhaven School, to be held by trustees so long as the land was used for school purposes. The land was marked off and a school was built thereon. Later, J. J. Kennedy sold to E. P. Kennedy 539.5 acres, including the one acre tract that the school was located on. Subsequently, J. J. Kennedy made a Quitclaim Deed to the trustees of the Fairhaven School district, conveying the lot in question, and setting out the same condition that was contained in the oral gift. Later, Fairhaven School was moved to a new location, and J. C. Kennedy, successor in title to E. P. Kennedy, claimed the property as having been abandoned by the trustees.

Issue: Can the original grantor convey by warranty deed his reversionary interest in the one acre tract conditioned upon an act that may or may not happen?

Holding: Interest remaining in grantor under conveyance of property to school trustees to be held so long as land was used for school purposes held alienable reversion arising from conditional limitation and were not an inalienable “bare possibility” within the statute, and this could be conveyed to the grantee and his successors in title.

Reasoning: The Code 1933, §96.102 declares, “A bare contingency or possibility may not be the subject of sale, unless there shall exist a present right in the person selling a future benefit

p. 103).” The Court quoted Prof. Wasbain in analyzing this statute stating, “Every right is not the subject of a grant, though it relates to land, or an interest therein.” Thus, the Court implied that a bare possibility of an interest which is uncertain is not grantable, but a possibility coupled with a present interest may be granted. J. J. Kennedy had a right to make a warranty deed to E. P. Kennedy, conveying whatever interest he had in all of the property described in the deed to the grantee. Upon making this deed, all the interest he had in the one acre tract, included in the realty described, was conveyed to the grantee. Although at the time J. J. Kennedy conveyed the 539 acres to E. P. Kennedy he had no ownership interest to the one acre tract, he did have a reversionary interest which may or may not lead to a subsequently acquired ownership interest that immediately insures to the benefit of the grantee. Thus, under the record, the Court erred in not decreeing the one acre to be the property of J. C. Kennedy, holding as successor in title to E. P. Kennedy. The Judgment of the trial court was reversed.

Citation: *Board of Education of Unified School Dist. 512 v. Vic Regnier Builders, Inc.*, 231 Kan. 731, 5 Educ. L. Rep. [1035] (Kan. 1982).

Key Facts: In 1956, the Unified School District (USD), acquired property by right of eminent domain. In 1959, the USD commenced eminent domain proceedings to acquire property adjacent to that, which was previously acquired. In both proceedings, the records reflect the actions were commenced to appropriate land for use as the site of a school building or extension of it. Over several years, more than \$850,000.00 was spent to construct, improve, and add to the school buildings that stood on the land acquired by eminent domain. In 1978, due to decreases in attendance, the school was closed and no longer used as an attendance facility; however, the school district maintained the property for other school purposes such as the special education office.

The board sought to clear title to the real estate so that the property could be sold. In response, the former landowners answered claiming that the school district did not acquire title in fee simple but instead acquired only the right of use of the property for school buildings and related purposes. Further, the former owners alleged that the property was abandoned and therefore reverted to them. The district court entered judgment in favor of the school district and the former owners appealed.

Issue: At issue was whether the school district, through condemnation proceedings, acquired the right of use of the property or acquired fee title to the property.

Holding: The court held that the school district had acquired fee title to the property and that just compensation had been paid to the original landowners as based upon fair market value at the time of the condemnation proceedings.

Reasoning: The court, in ruling, considered public policy, statutory interpretation, legislative intent, and principles of law. The court found that at the time of the initial condemnation proceedings, the landowners, school district, and attorneys involved assumed that the school district was obtaining fee title. This was evidenced by the fact that the landowners were compensated for the full value of the land. The court noted that while the Court of Appeals reversed the district court and found that there was a reversion of title to the original owners or heirs, such a decision would unjustly compensate the heirs. The landowners would essentially be paid twice the fair value of the property, which would undermine state public policy relating to financial stability for public schools.

In addition to concerns of thwarting public policy, the court paid careful attention to the statutes governing both the power of school boards to obtain property and the boundaries of eminent domain. The court sought to identify and uphold the legislative intent behind the

statutes. The court reasoned according to the framework presented in *Farm & City Ins. Co. v. American Standard Inc. Co.* (1976), requiring that when legislative intent can be ascertained from statute regardless of insertions or omissions, the purpose of the legislature governs. The court reinforces legislative intent cannot be ascertained unless the acts and all relevant parts of an act are construed and considered as a whole. Statutes should be examined in the context of the adoption of and objectives of each. Kansas law recognizes that statutory construction should not lead to uncertainty, confusion, or injustice when avoidable (*Coe v. Security National Ins. Co.* (1980)).

An examination of the statutes outlining a school district's power to acquire fee title in land taken by eminent domain reveals a long underlying approval of public ownership of schools and school lands. In *Devena v. Common School District* (1960), the court recognized that the statute in force at the time of acquisition determined the interest of the parties. When USD originally acquired the parcels in 1956 and 1959, the statutes governing school property ownership allowed the board to hold fee title and allowed for the sale of school property if necessary pursuant to related statutes.

The court could not find public policies or statutory changes indicative of legislative intent to change the established law that school districts acquire fee title to property taken by condemnation for school buildings. The court's consideration of social injustice by paying public money to private citizens whose predecessors were compensated for the same property supported the holding that the district court had correctly ruled in favor of the school board.

Disposition: The Supreme Court of Kansas reversed the judgment of the Court of Appeals, which had reversed the judgment of the district court. Therefore, the Supreme Court affirmed the judgment of the Johnson County District Court.

Citation: *Evangelical St. John's Church v. Otto Ind. School Dist.*, 203 S.W. 2d 299 (Tex. Civ. App. 1947).

Key Facts: The Evangelical St. John's Church acquired 3.7 acres of land in 1892, which it owned and used continuously from the date of purchase, through the proceedings at hand. In 1900, the community served by the church was organized into the Mettina Common School Dist., which was created for the purpose of providing free public education to the children of the district. A small building located on the church property was, by agreement of the parties, thereafter used jointly by the church and the school district, without costs to the latter.

In 1917, the parties agreed that the building was no longer suitable for the purposes it had been used for in the past, and so the parties jointly contributed to the erection of a new building upon the premises owned by the church (*Id* at 300). The new building was used by the school district until 1935 when the school district was consolidated with and merged into the Otto Independent School District (*Id* 300).

At a public hearing just prior to the consolidation, the county school superintendent announced that the building was the property of the appellant and would not become property of the appellee upon the consolidation (*Id* at 301). After the consolidation, the building was no longer used for school purposes and in 1945 the church sold the building for \$325.00 (*Id* at 301).

The Otto Independent School District, as successor in right to Mettina Common School District sued the church for the proceeds derived from the sale of the building. The Trial Court found in favor of the school district and the church appealed.

Issue: Should the building in question be regarded as realty, or personal property that could later be severed from the realty, and if said building should be regarded as personal realty,

did the superintendent or the Board have the authority to abandon further use of the building for school purposes?

Holding: This Court held that a building erected upon land becomes a part of the realty, absent any intention or agreement on the part of the interested parties to the contrary (*Id* at 301).

Reasoning: In review of the evidence the Court noted that there was nothing presented that suggested that there was ever any intention or agreement by the parties, that the building, when erected, would be regarded as personal property, or that it might thereafter be severed from the realty and removed from the premises. For the aforementioned reason, the Court determined that the statutes cited by the Trial Court were not applicable in this case.

The Court reiterated that the building “erected upon land becomes a part of the freehold in the absence of any intention or agreement on the part of the interested parties that such building should not become permanently annexed to the soil” (*Id* at 301). (See also *Hutchins vs. Masterson & Street*, 46 Tex. 551 (1877).) The Court further determined that it made no difference who contributed what funds for the construction of the building.

In viewing the evidence in a light most favorable to the school district, the Court reasoned that there may have been an implied agreement that the building, although erected on the church’s property, would nevertheless be used for school purposes so long as the proper school officials desired. The Court stated that the superintendent had no authority to determine the ownership of the building, but was authorized to abandon the use of the building for school purposes, and the evidence presented showed that they did, thereby forfeiting any preexisting right that they may have had in the building.

Citation: *Bonnell v. Regional Board of School Trustee of Madison County*, 258 Ill. App. 3d 485, 90 Educ. L. Rep. [324], (Ill.App. 1994).

Key Facts: Charles Bonnell entered into a sales contract to purchase property, known as Lincoln School, which was being sold by the School Board and School District. The Board was directed to sell the property by the District. The Board proceeded to advertise the sale and auction of the property. Charles Bonnell was the high bidder at the sales auction; therefore, he entered into a contract to purchase the property. Bonnell paid for the property over a period and later that year was given the property deed. He spent considerable money to rehabilitate the property. A prospective renter requested the property be tested for the presence of asbestos, which yielded positive results. Following the testing, which revealed asbestos and snuffed out the possible rental agreement, Bonnell filed suit against the Board and the District alleging breach of contract and damages in tort. Bonnell alleged that the defendants had been aware of the presence of asbestos on the property but had willfully and fraudulently failed to disclose it. Further, Bonnell alleged that there was a duty to disclose such information as it was not readily detectable by visual inspection. The Board, along with other defendants, moved for dismissal of the complaint claiming the Board and District immune from such suits.

Issue: At issue was whether the school district and school board's sale of the property was discretionary, thereby providing immunity from all claims.

Holding: The court held that the carrying out of the sale of the property was the act at issue and was discretionary in nature thereby providing no immunity to the school board or district.

Reasoning: The court first addressed which act was at issue. Bonnell claimed that the sale of the school was the substantive action and was ministerial in nature. The board and district argued that the decision to sell the school and the determination of the terms of the sale were what should be reviewed. Further, they argued the decision to sell was discretionary in nature.

Public entities exercise discretion in selecting and implementing a plan while working toward public improvements, but acts magisterially once it begins carrying out the plan (*Eck v. McHenry County Public Building Commission*, 1992). The court made several references to and built upon the *Eck* court findings. In *Eck*, the court found that there is only immunity for public entities and public employees of local government and governmental agencies, for acts that are discretionary in nature but not for acts which are ministerial in nature.

The court also cited *Kennell v. Clayton Township* (1992) where discretionary acts were distinguished as being unique to particular public offices and requiring judgment, while ministerial acts were those performed in a given, dictated manner without exercising judgment or discretion. The school board argued that the decision to sell the real estate was foremost and discretionary in nature. However, the court found that unless the actions were viewed as a whole it would be possible to deem almost any ministerial act as discretionary.

Public employees are given immunity from liability for discretionary acts, which are those requiring judgment and decision. However, there is no immunity from negligent performance of ministerial acts, which is essentially obedience to orders for performance without judgment (*Greeson v. Mackinaw Township*, 1990). The court found the determinations regarding the sale of the school to be discretionary acts, for which the law afforded immunity. However, once that decision was made, the actual selling of the school became ministerial in nature, and for this, the laws provide no immunity. Furthermore, the court held that the laws granting immunity to such agencies and representatives as the school board and district did not provide immunity against the tort allegations. Therefore, since the trial court had dismissed the complaint without explaining its reasoning, the judgment was reversed.

Disposition: The Appellate Court of Illinois for the Fifth District reversed the judgment of the circuit court of Madison County and remanded for further proceedings.

Citation: *Abshire et al. v. Vermilion Parish School Board* 848 So.2d 552 (La.App. 2003).

Key Facts: In 1909, the Vermillion Parish School Board authorized its president to act as an authorized agent on behalf of the Board to perform all necessary steps to transfer a parcel of land to United Irrigation for the purpose of building a canal. The Board granted said authority by the passage of a right-of-way resolution on Section (16) lands. Sometime later the same individual signed a “Cash Deed” transferring said property for a nominal fee. This transaction was completed and witnessed by notary. The language imbedded in the “cash deed” diverged from the language authorized in the aforementioned resolution. More specifically the “cash deed” described said transaction as a sale.

The property in question subsequently traded owners multiple times absent of dispute. In April of 2000, the Vermillion Parish School Board gave notice to the most current tenants indicating the school district position that it still owned said parcel. Furthermore, the school district advised of its intent to collect a lease fee. The parties could not reach agreement and the issue subsequently was remanded to the court for declaratory judgment.

Legal Issue: Was the transfer of property a sale or servitude?

Holding: The trial court and appellant determined the transfer of land to be a sale. However The Supreme Court of Louisiana reversed and remanded the lower courts finding.

Reasoning: The Supreme Court first contemplated the nature of the transaction. In reviewing the original resolution ratified in 1909, it was clear to the court the intent of the school district. The language of the resolution specifically described a transaction involving the granting of right-away not a sale.

Citation: *Wilson Coalition v. Mayor and Common Council of City of Summit*, 245 N.J. Super. 616, 586 A.2d 346, 65 Educ. L. Rep. [811] (1990).

Key Facts: A tract of land containing approximately 1.5 acres was purchased by the City of Summit. The purchase agreement detailed that a portion of the site was designated for the building of a new school and the rest was to serve future municipal needs. At or around 1957, the city erected a school on the site and it was known as the Robert Cade Wilson Elementary School. In 1980, the board closed the Wilson Elementary School and instead moved their administrative offices into the facility. In addition, the local childcare center, historical society, and other non-profit organizations were allowed to occupy unused portions of the building as tenants.

In 1986, the board of education received approval to transfer the property to the city for use in the area of residential development. By 1988, the board of education had determined that the facility was no longer needed for school purposes and the city council voted to accept the transfer. The city moved forward with plans to utilize the property and facilities as a community resource center. The city council accepted the property and introduced an ordinance detailing the transfer. The property was to be utilized for services that promoted general welfare, health, safety, and morals of the citizens of Summit. Several local citizens filed suit after the ordinance was adopted alleging that the city of Summit had accepted land from the board of education only to lease it to three nonprofit agencies, and that such action violated the governing statutory scheme of the Local Lands and Buildings Law.

Issue: At issue was whether or not the city council had violated laws regarding the acquisition of property when it accepted a deed proffered by the board of education.

Holding: The court held that the defendants were permitted to and did correctly acquire the property and correctly leased the property to nonprofit agencies to achieve public purposes.

Reasoning: The court first made a determination that the property, as offered to the city of Summit by the board of education, was rightfully and legally conveyed. Here, the court held that

whenever property is no longer needed for school purposes, it may either be leased or sold by the board of education for a nominal consideration not only to the municipality or another unit of government, but also to a variety of nonprofit organizations which are deemed to provide services of benefit to the public.

The council's ownership of the property was settled; however, the issue of whether or not the property had been leased to non-profit agencies in a manner outside of the statutory regulations was addressed.

The Plaintiffs alleged that the city had accepted the property with the sole purpose of immediately entering into leases for the available space. However, the court looked at whether or not the leases at issue were beneficial to the public at large; thus, whether the leases satisfied the requirements as set out in the statutes.

The concept of public purpose is a broad one. Generally speaking, it connotes an activity which serves as a benefit to the community as a whole, and which, at the same time is directly related to the functions of government. Moreover, it cannot be static in its implications. To be serviceable it must expand when necessary to encompass changing public needs of a modern dynamic society. Thus it is incapable of exact or perduring definition. In each instance where the test is to be applied the decision must be reached with reference to the object sought to be accomplished and to the degree and manner in which the object affects the public welfare. (*Roe v. Kervick*, 42 N.J. 191, 207 (1964))

The court ultimately found that the needs of the community of Summit, as a whole, were met by the leases to local business. Businesses that further public welfare were those that qualified under statutory definition as activities or businesses that met the needs and desires of residents (*Weeks v. Newark*, 62 N.J. Super. 166. (1960)). The board of education, when transferring the property to the city of Summit, did so within its discretion and also did so without attaching specifications for exclusive uses of the property.

Referencing the *New Jersey Statutes Annotated*, the court held that a municipality such as Summit had the discretion to lease some or all of property it acquired to nonprofit corporations or associations for public purposes for a nominal consideration. Here, the city council determined that the land, which was no longer needed for use as a school, was needed to fulfill needs of local citizens and that the three agencies with which leases were made, would fulfill such needs. These needs included daycare, early childhood education, and elderly care and community activity offices. The leases made with the nonprofit organization were deemed valid and within the statutory scheme.

Disposition: The Superior Court of New Jersey, Law Division of Union County, held that the city had authority to enter into the leases and dismissed the complaint with prejudice.

Citation: *McElroy v. Pope*, 153 Ky. 108, 154 S.W. 903, (1913).

Key Facts: Cecil McElroy executed a deed conveying land to the school trustees of Washington County, Kentucky in 1864. McElroy received \$50.00 for the property. In 1909, Washington County board of education sold the same parcel to Charles Pope for \$515. McElroy claimed that the conveyance clearly set out that the property was to be used for school purposes. In addition, McElroy claimed that if the designated use ceased, the property reverted back to him; therefore, McElroy claimed the land sold Pope was his and filed suit.

Issue: At issue was whether McElroy held any title to the land he originally sold to the school board, but which was later sold to Pope.

Holding: The court held that McElroy had no claim to the land he previously sold to the school board, since the property was conveyed for valuable consideration and the deed did not contain a provision that nonuse for named purposes would defeat the title.

Reasoning: The court held that land does not revert to a grantor where land is conveyed for a valuable consideration and there is no clause or provision in the deed for a reversion. McElroy did not donate the land to the board of education; rather he accepted \$50.00 as consideration of the conveyance. When a conveyance is made for valuable consideration and for a presumptive commensurable consideration, without any reserved reversion, there can be no recovery (*Murphy v. Metz*, 85 S. W. 1097, 27 Ky. Law rep. 617 (1905)). There was no provision for a reversion contained in the deed signed by McElroy and conveying land to the board of education.

In *Raley v. Umatilla County* (15 Or. 172, 13 Pac. 890, 3 Am. St. Rep. 142, 1887), which is cited by the court and analogous to the case at hand, land was conveyed for the specific use of educational purposes. In *Raley*, the deed explicitly states the land was to be used for no other purposes. However, because the deed contained no provision regarding recovery of title, the court held that grantors could not recover the land. McElroy had no claim to the land and the board of education was not divested of their title for uses other than schooling.

Disposition: The Court of Appeals of Kentucky affirmed the circuit court's judgment in favor of Charles Pope.

Citation: *Yeshiva of Spring Valley, Inc. v. Board of Education of East Ramapo Central School District*, 132 A.D.2d 27, 521 N.Y.S.2d 253 (1988).

Key Facts: The East Ramapo School District was closing one of its elementary schools. They provided notice that the property was going to be released to the public. Two parties expressed interest in leasing the property. One of the interested parties, Yeshiva, planned to enroll 600 students in the leased property and was willing to pay above the fair market value for the property. The other party, Gittelman Hebrew Day School, had been leasing another property

from the board. Gittelman's lease was going to be terminated at the end of the 1985-1986 school year.

A public meeting was held in which both parties were allowed to address the board concerning their interest in leasing the school building. The school board indicated that offers above \$60,000 would not be entertained. The board never indicated the factors that would be considered in determining which party would be allowed to lease the property.

The school board voted to award the lease to Gittelman. The rationale was that they owed it to them since they were being displaced from another property and Gittelman had taken excellent care of the other property. Yeshiva filed a suit claiming the board acted in an arbitrary and capricious manner. The court ruled in favor of Yeshiva. Gittelman appealed the decision, but the decision was affirmed by the Supreme Court of New York.

Issue: At issue in this case is whether a school board can ignore monetary factors when determining to which party they will lease property.

Holding: The District Court and the Supreme Court of New York held that the school board acted in an arbitrary and capricious manner. Both courts ruled in favor of the plaintiff, Yeshiva.

Reasoning: The courts determined that the board acted in an arbitrary and capricious manner by failing to take the fair market rental value into consideration. This is a violation of Education Law § 403-a. The school board based its decision on part of this law, which says a board of education may lease property to any person, partnership, or corporation that the board has determined "will provide the most benefit to the school district." However, the board did not abide by the rest of the law which adds "for a sum not less than the fair market rental value" of the property. In leasing the property, the board maintains ownership of the property. Therefore, it

would be a breach of the school board's fiduciary duty not to consider how the property would be maintained as part of the agreement. Although Gittelman had proven themselves as good clients, the school board was obligated to consider the amount of money to be offered as part of the benefit. The board never accepted actual bids on the property. The school board should consider the amount offered as well as other pertinent factors.

Disposition: The Supreme Court of New York upheld the lower court's ruling.

Citation: *Reese v. The Charlotte-Mecklenburg Board of Education*, 676 S.E. 2d 481,244, Educ. L. Rep [837] (N.C.App.2009).

Key Facts: This case came on appeal from the Superior Court, Mecklenburg County, after the plaintiff's argument fell short based on the pleadings presented in the case. In the first month in the year 2007, the aforementioned county entered into an agreement with a private company which included the transfer of nearly 500,000 square feet of land for the purpose of private development. A portion of said land included the certain square footage of the existing school board office complex. Later in that same year, the county commission approved a related resolution approving the transfer of said property by way of an agreement entitled "The Brooklyn Village Interlocal Cooperation Agreement" with the board of education. In the agreement, the board of education was to receive an alternate office complex and more than \$13 million in funds in exchange for said property. In June of 2007, the plaintiff filed a complaint with the Superior Court of Mecklenburg County in an attempt to enjoin the proposed action. The plaintiff articulated the merits of his complaint to the courts to no avail. The circuit court ruled in favor of the school district. The plaintiff appealed to the Court of Appeals of North Carolina.

Issue: Was the proposed land transaction authorized under prevailing law and did the trial court abuse its discretion in rendering the decision.

**Holding:** The court held that the board of education conveyed the property in a manner consistent with the laws of North Carolina N.C.G.S.A. §§ 115C-518, 160 A- 274.

**Reasoning:** First the court reasoned that the plaintiff's argument proffering the trial court erred in considering an exhibit provided by the defendant was meritless. Secondly, the court considered the plaintiffs' argument that the board had exceeded its statutory authority by agreeing to the exchange, given their prior knowledge that the property would ultimately be conveyed to a third party. The court summarily dismissed that argument. Finally, the court referred to existing North Carolina statutes, which grant any governmental unit, to include boards of education, with the authority to convey property to other governmental units, with or without consideration, the right to lease, exchange, or sell real property.

**Disposition:** The Court of Appeals affirmed the judgment of the trial court.

**Citation:** *United States v. 1119.15 Acres of Land*, 44 F. Supp. 449 (E. D. Ill. 1942).

**Key Facts:** A school district in Williamson County, Illinois, was conveyed title to land to be used for school purposes. The deed transferring the property to county school trustees contained no reversion in the grantor. Rather, it contained only a possibility of reverter for estate at a future time without any future claims to title. During the time that the school was still in possession of the land, the federal government commenced an eminent domain proceeding. At the commencement of the condemnation, there were questions as to who was entitled to share in the proceeds awarded for compensation of the taking of the property. The school board trustee claimed the school was entitled to all compensation, as the school had not ceased existence nor had the property been abandoned; therefore, the expressed requirement of possibility of reverter only in event of abandonment of conditions regarding school usage has not been satisfied. The

school board trustee claimed, based upon this, that the heirs of the grantor had no claim for proceeds from the government compensation.

Issue: At issue was whether the school board trustees held title to the property in fee simple and whether the trustees were entitled to all proceeds paid by the federal government as compensation for the property.

Holding: The court held that the school district held title to the land and was entitled to all proceeds paid as just compensation for the eminent domain action.

Reasoning: The court relied on background principles of common law of property as well as case law. The court found that if at the time of a taking the event ripening the right of reverter is not imminent, then the owner of estate in fee simple defeasible is entitled to all eminent domain compensation (*First Reformed Dutch Church v. Croswell*, 3d Dept. 1924, 210 App. Div. 24, 206 NY.S. 132 (1924)). The court held that the school district trustees held title in fee simply, defeasible only by abandonment of use of the land for school purposes. As such, the court determined that the heirs were not entitled to share the proceeds of compensation because there was no estate in the heirs at the time of the taking.

In order for the heirs to have a right to a portion of the proceeds, the event which possession was conditioned upon would have to already have occurred prior to the taking. The court found that the school gave no appearance of any such possibility of abandonment of the purpose for which the land was obtained. The continued qualified use at the time of the commencement of the eminent domain proceedings equated to the school trustees' continued possession and title to the property. This entitled the school district to the entire amount of compensation. However, the court explained that if at the time of the taking, the event upon which the property is to revert is certain and imminent, the compensation would have to be

divided between the owner of the estate and owner of future interests in the estate. Such was not the case before the court and the occurrence of future events such as abandonment of use must be evident not anticipated.

Disposition: The court rendered judgment for Armstrong School and other parties of Williamson County, Illinois.

Citation: *Allemannia Fire Ins. Co. v. Winding Gulf Collieries*, 60 F.Supp. 65 (S.D.W.Va. 1945).

Key Facts: Allemannia Fire Insurance Company was the insurer for the high school. Following a devastating fire, Allemannia was unable to determine to whom the proceeds from the fire policy should be paid. The board of education was the designated party as related to the insurance account; however, following the fire, Collieries alleged that at the time the fire destroyed the school, thereby ceasing its use as a school, the property upon which it stood reverted back to the grantor, and thus Collieries. Collieries asserted his claims despite specific and express language in the deed, which outlined the use of the land to be for school purposes only. The deed at issue also provided for automatic reversion of title to the grantor in case the designated use ceased. Allemannia filed an action in interpleader to determine which party was entitled to the insurance proceeds. Allemannia paid the entire amount of proceeds into the court until a decision was reached.

Issue: At issue was whether the school board was entitled to the full measure of insurance proceeds or whether Collieries had a right in the proceeds due to his right of reversion in the property.

Holding: The court held that the insurance proceeds stood in place of the building, located upon the land in which Collieries held a future interest and that the proceeds were to be distributed to all owners of different estates, according to their respective rights in the property.

Reasoning: In determining whether the school board was entitled to all insurance proceeds, the court gave great weight to the language contained in the both the deed and the insurance policy. The policy was a blanket fire policy that covered all school structures existing at the time of issuance and anticipated or later acquired, and contained phrase “*for account of whom it may concern.*” The court held this meant that the policy insured the property as a whole and thus benefited all parties interested in the title, such as Collieries.

On appeal, the court reasoned that insurance contracts were personal and if there were no words indicating otherwise, the policy would be deemed to ensure the interest of all parties (*Clements v. Clements*, 167 Va. 223, 188 S.E. 254 (1936); *Sampson v. Grogan*, 21 R.I. 174, 42 A. 712, 44 L.R.A 711 (1899)). The court agreed with Collieries’ proposed claim that the proceeds should be distributed to all owners of different estates in the land in question. The court dismissed the Board’s claim that they had no authority to provide insurance for Collieries’ benefit thereby requiring all proceeds to be paid the Board.

*Board of Ed. v. Commercial Casualty Ins. Co.* (116 W. Va. 504, 182 S.E. 87 (1935)), which the Board cited, was different in that the action there was between the insurance company and the Board. The court found the case not applicable. The Board had the authority to contract for and maintain insurance on the land; however, the court suggested that the Board may have had a duty to take reasonable care of the premises as Collieries reversion was a clear interest in the property. Because the duty of the Board to care for the land was not at issue, the court chose not to address the issue. The court determined that though the Board’s action of insuring the

property for Collieries' benefit was unauthorized it has been done and the board could not choose to take advantage of his rights under the circumstances. The court's opinion does not make any express allowance or order for payment of proceeds to Collieries but sets out their holding in a manner giving inference of such.

Disposition: The West Virginia District Court, for the Southern District, overruled.

### Analysis of Cases

The purpose of this study was to conduct an analysis of relevant issues regarding the acquisition, use, and disposition of school district property. More than 80 cases, ranging in date from 1856 to 2009, were analyzed in this study to identify emergent patterns in facts, holdings, and courts' reasoning over time and across multiple court jurisdictions, in order to develop a more in-depth understanding of the topic in this study. The cases are first categorized into one of three sections. The first section is exclusive to litigation involving school districts' efforts to acquire property and to erect school facilities. The section that follows is a review and analysis of cases pertaining to the usage of school district property. The last section focuses on court cases concerning the appropriate disposal of school district property. Additionally, the sections are subdivided into case clusters which serve the purpose of isolating specific facts, holdings, and court reasoning which will provide the basis for the summary in Chapter V.

### Acquisition Cases

Twenty-five cases were identified for review and analysis in this section. The cases in this section all pertain to legal disputes arising from processes and procedures surrounding school districts' attempts to acquire land, to improve on such, and to allocate existing or future

resources for such purposes. The key facts, issues, and court holdings are unique to each respective case, but because the outcomes of the cases either relied on or created precedence they also shed light on patterns and trends occurring across time and court jurisdictions relating to this topic. These patterns and trends resulted in the identification of case clusters within the section pertaining to acquisition. An analysis of the cases reviewed and clustered are in the pages that follow. Cases are grouped into the following clusters: (1) General Authority, (2) Selecting Property, (3) Purchasing Property, (4) Levying Taxes and Fees, (5) Selling Bonds, (6) Eminent Domain, (7) Leasing Property, and (8) Other. After reading and analyzing the 25 cases in this section, groups were determined based on the issue(s) within the cases which were then given the cluster names above in 1-8.

Table 3 provides summary data for the 25 cases selected for this section, which are related to the acquisition of school district property. The table identifies the year, case name, and the ruling favor. The data collected from the aforementioned cases evidences that many of the outcomes resulting from litigation on the topic of school district property acquisition have been favorable to boards of education. In fact, 19 of the 25 cases reviewed resulted in an affirmation of the applicable board's argument.

Table 3

*Final Court Decisions: Acquisition of School Property*

Year	Case name	Ruling favor
1856	<i>Sheldon and Others v. The Centre School District</i>	School Board
1870	<i>Thomas Greebanks v. Henry Boutwell</i>	School Board
1922	<i>McKinnon County Superintendent of Ed. V. Gowan Bros.</i>	School Board
1927	<i>Vaughan v. McCartney</i>	School Board
1930	<i>Kilpatrick v. City Board of Education Russellville</i>	School Board
1931	<i>Spaulding v. Campbell County Board of Education</i>	School Board
1935	<i>Emmons v. Board of Education of Lewis County</i>	School Board
1937	<i>Denny v. Mecklenburg County</i>	Plaintiff
1938	<i>Johnson v. City of Sheffield</i>	School Board
1941	<i>Harms v. School District No. 2</i>	Plaintiff
1947	<i>Smith v. Jefferson County</i>	School Board
1948	<i>Bell v. Board of Education of Shelby County</i>	Plaintiff
1948	<i>Justice v. Clemons</i>	School Board
1956	<i>Board of Education of Blount County v. C. B. Phillips</i>	School Board
1960	<i>Board of Education of Nashua v. Vagge</i>	Defendant
1961	<i>Smith v. City Board of Education of Birmingham</i>	School Board
1972	<i>Kramer v. Board of Education City School District of Olean</i>	School Board
1976	<i>Richards v. Planning and Zoning Commission</i>	School Board
1981	<i>George v. Board of Education</i>	School Board
1985	<i>Neis v. Board of Education of Randolph School District</i>	Plaintiff
1993	<i>Foree v. School district No. 7 of Holt County</i>	School Board
1993	<i>Howard Jarvis Taxpayers Assoc. v. Whittier Union H.S. District</i>	School Board
1996	<i>Clayton v. School Board of Volusia County</i>	Plaintiff
2005	<i>Ephrata Area School District v. County of Lancaster</i>	School Board
2007	<i>Litcher v. Wake County Board of Education</i>	School Board

*General Authority*

The cluster of cases reviewed in this subsection specifically addresses the question of whether school boards have the requisite authority to acquire school district property they deem appropriate. The cases reviewed answer in the affirmative in all but 6 incidences. This is evidenced in *Board of Education of Nashua v. Vagge* (1960), where the court established the authority to acquire property for school-related purposes is vested in boards of education. The courts often cite the specificity of state statutes in their reasoning. For example, The Code of

Alabama §16-47-3, and Kentucky St. §§4434(a), 4439 expressly provide school districts such authority.

Despite having this statutorily-created authority, there has been related litigation; particularly when a board's specific actions or lack thereof gave rise to a dispute.

The cases reviewed show a pattern in how the courts address this issue. They consistently avoid interfering with the discretionary authority provided to boards. That is, unless, as established in *Board of Education of Blount County v. C. B. Phillips* (1956), there is evidence that a board's decision was wrought by a gross abuse of such discretion. The court concluded that such authority is not unbridled. School boards cannot compel higher authority to convey lands for school purposes.

In summation, the data substantiates that school boards have the authority to acquire property for school district use so long as they do not act arbitrarily or capriciously. School boards must also adhere to guidelines established in their respective state's code.

### *Selecting Property*

This study examined four cases where the Board of Education's authority to select a site for acquisition was litigated. In *Vaughan v. McCartney* (1927), the court found that boards have and may use their discretionary authority to make decisions relating to school site selection.

Similarly, in *Spaulding v. Campbell County Board of Education* (1931), the Court determined The County Board of Education had exercised its discretion when selecting a school site and their selection should not be interfered with, unless it appears the Board acted arbitrarily or capriciously. Arbitrary and capricious conduct represents "a clear error of judgment; an action not based upon consideration of relevant factors and so is arbitrary, capricious, an abuse of

discretion or otherwise not in accordance with law or if it was taken without observance of procedure required by law” (5 USC. 706(2)(A) (1988)).

The last two cases examined within this cluster are congruent with the findings of previous court decisions on the matter. The Court determined in *Justice v. Clemons* (1948) that the school system had appropriately deliberated and decided on the site of a new school within the scope of its authority. *Neis v. Board of Education of Randolph County* (1985) represents the last case analyzed in this grouping of cases, but also resulted in an affirmation of the discretionary powers vested in local boards of education to select properties to acquire for school district use.

School boards have broad discretionary power to select properties they wish to purchase for school district use.

### *Purchasing Property*

Two cases were evaluated relating to direct property purchases. They well establish the authority of boards to purchase property. *In Kramer v. Board of Education, City School District* (1972), a taxpayer filed a motion to enjoin the Board of Education from purchasing a parcel of land. The Petitioner argued that the Board had no authority to make such a purchase independent of the electorate. The Court found the petitioners argument to be terminally flawed, given that CPLRn7801 et. seq, Education Law §§ 2511 and 2512 subds. 2, 6 bestow on Boards of Education the power to do so. Equally, the other case, *Neis v. Board of Education of Randolph School District* (1985), found the same. However, it also determined that such purchases could only occur if the Board provides public notice of the need and designated purpose for the proposed acquisition.

School boards can purchase properties for their use within the limits of the power authorized by State statutes.

### *Levying Taxes and Fees*

School districts desiring to acquire new properties for the purpose of new school construction or other justifiable cause frequently use taxation as a method of funding such. As a result, a number of lawsuits have centered on this central issue. In *Howard Jarvis Taxpayers Association v. Whittier Union High School District* (1993), the court determined that the board of education could impose fees under the Landscaping and Lighting Act to construct improvements at an athletic complex. Likewise, in *Thomas Greenbanks v. Henry Boutwell* (1870), the court ruled school districts have the authority to collect taxes for the provision of establishing new schools.

In short, the cases analyzed within this section indicate that boards of education have the authority to levy taxes and fees to finance property acquisitions within state guidelines.

### *Selling Bonds*

Four cases dealing with the issuance of bonds to finance the acquisition of school district property was included in this study. In two of the four cases, the school district failed to prove its argument and lost at trial. However, even in these instances, the Court established that school boards have the necessary authority to sell bonds in order to finance property purchases. In *Johnson v. City of Sheffield* (1938) and in *Sheldon and Others v. The Centre School District* (1856), the Court found the same.

However, in *Denny et al. v. Mecklenburg County* (1937), the Court stipulated that school boards have the requisite authority to issue bonds. But, it also added clarification and said such action could only be done in accordance with established regulations and for designated purposes. In the aforementioned case, the construction of “teacherages” was not an authorized purpose. Finally, in *Bell v. Board of Ed. of Shelby County* (1948), the Court noted the Board of Education failed to follow proper procedures and abused its authority to proceed with the sale of bonds. In this instance, the court determined the Board of Education failed to adhere to KRS 156.070 and KRS 160.470 requiring that the State Board of Education shall approve budgets, budget amendments, and related construction plans.

School boards have the authority to sell bonds but must follow guidelines established in State statutes and regulations.

### *Eminent Domain*

The Courts have addressed litigation relating to eminent domain as it pertains to property acquisition for school districts, a number of times. This study reviewed two such cases. In short, the courts have well-established that eminent domain is a viable and legal method for acquiring needed property when the land owner and the board cannot reach a satisfactory and reasonable agreement. In *Smith v. City Board of Education of Birmingham* (1961), the court concluded the district could condemn and take lands to construct a central office complex.

Yet in another case, *Clayton v. School Board of Volusia County* (1996), the court addressed another aspect of eminent domain. In this case, a suit was filed because the School Board settled an eminent domain dispute prior to a fair market value being established by the hearing panel. The complainant, Clayton, argued that the school board attempted to avoid the

requirements in F.S.A § 235.054(1)(b) which stipulate procedures for school boards acquiring property by negotiated purchase. The settlement was well in excess of the estimated value of the property and above a purchasing ceiling established by state law. Therefore, the Court determined that a settlement agreement relating to eminent domain proceedings becomes a negotiated purchase. Thus, school boards are required to adhere to section 235.054 of Florida Code. This section stipulates that boards can purchase property for \$500,000 or less, as long as the purchase price does not exceed the average appraised value of the property. Any purchase greater than \$500,000 or in excess of the average appraised value requires an extraordinary vote. The Court ruled the Board had abused its authority and the eminent domain settlement was void.

Courts have established that school boards may invoke eminent domain proceedings in order to acquire needed property when the land owner and the board cannot agree on a fair sale price. However, some states establish criteria relating to eminent domain proceedings when the value of the property exceed certain thresholds.

### *Leasing Property*

This study evaluated the key facts, issues, and holdings of five cases related to acquisition of school district property by lease. Of the five cases analyzed, all were favorable outcomes for the applicable boards of education. In *Foree v. School District No 7*. (1993), it was decided school districts are legally able to enter into lease agreements for purposes of acquiring school district property. This particular case pertained to the leasing of mobile homes to be utilized as classrooms. Likewise, in *Litcher v. Wake County Board of Education* (2007), the Court established that the Wake County Board of Education could lease property on which to locate a modular school.

In the three remaining cases, school districts have litigated their right to enter into lease agreements. This included instances where schools, facility improvements and renovations, and additions are acquired with a terminal lease. Upon the expiration of such, the leased property is turned over to the school district. In all three cases the courts found this method of property acquisition to be legally acceptable. As an example, in *George v. Board of Education* (1981), the lease term was established to terminate after a 5-year lease, at which time the school property and buildings would be donated to the district. The Courts came to a similar conclusion in *Emmons v. Board of Education of Lewis County* (1935) and in *Kirkpatrick v. City Board of Education of Russellville* (1930).

School districts can acquire property through lease purchase agreements, absent specific statutory direction prohibiting the practice.

#### *Other Cases*

After analyzing the cases reviewed, three cases were determined to be relevant to acquisition case law, but happened to fit poorly in the case clusters already discussed. Two of the three cases not meeting the cluster criteria relate to litigation resulting from the construction of schoolhouses. Disputes in these cases caused non-payment for work, materials, or both. The Courts were split in determining the proper remedy in the cases. *Harms v. School District No. 2* (1941) is one such case that involved a withholding of funds for work performed and materials supplied. This case, heard by the Supreme Court of Nebraska, dealt with whether or not the building committee, comprised of two board members, of the defendant school district had entered into an ultra vires contract. In addition, it considered whether the result of such would preclude the board from being sued by a vendor who supplied materials for a new school based

on the contract with the building committee of the board. The court concluded that the contract for materials and supplies was binding even though the vote by the electors failed to meet the requirements set forth in Comp. St. 1929, §§ 79-208, 79-212. The court reasoned the board's decision to construct new schools fell within the general powers granted by the legislature. The board's argument contending it was not liable because there was not valid contract fell short. The board lost in this instance and was ordered to pay for materials and supplies delivered.

In *McKinnon County Superintendent of Education v. Gowan Bros.* (1922), the Gowan brothers filed a claim to enforce a mechanic's lien relating to the construction of an agricultural high school building. The court concluded that such a lien was not enforceable. It cited 18 R.C.L. pp. 881, 882 and *United States Fidelity and Guarantee Company v. Marathon Lumber Company* (1844) in its decision indicating that the building was not subject to the payment of the claim.

The final case reviewed in the acquisition section of this study, *Ephrata Area School District v. County of Lancaster* (2007), related to a dispute arising from a request for an easement so that a school board could develop an entry and egress drive suitable to the Board. To obtain such the Board needed to purchase property from private owners, which it did successfully, and then get the county commission to permit a right-of-way easement to the Board for the drive. The county did not approve the request and the Board filed a motion with the court attempting to compel the county to approve the request. Ultimately, the Board of Education won and obtained the desired relief.

The cases in this cluster substantiate that school boards are given discretionary authority to acquire school district property by purchase, eminent domain, conveyance, and lease purchase agreements. In addition, case law shows that boards, generally, are successful in defending

adverse claims relating to acquisition providing they have adhered to applicable state laws. This is a result of the court respecting the intent of legislation to grant boards discretionary authority.

### Property Use Section

Thirty-five cases were studied relating to the use of school district property. These cases were then categorized into clusters to review and analyze facts, holdings, and court reasoning. For the purpose of this study, the clusters for the cases related to the use of school district property are as follows: (1) Leases, (2) Equal Access, (3) Discretionary Authority, (4) Joint Use, (5) Abandonment, (6) Nuisances, and (7) Selling Items to Students. After reading and analyzing the 35 cases in this section, groups were determined based on the issue(s) within the cases which were then given the cluster names above in 1-7.

Table 4 illustrates the cases reviewed in this section. The cases are identified by year, case name, and ruling favor. Of the 35 cases litigated, 20 rulings were decided in favor of the school district. The paragraphs that follow provide additional details for the cases in aggregate and by cluster.

Table 4

*Final Court Decisions: Use/Non-use of School Property*

Year	Case name	Ruling favor
1875	<i>John G. Spencer v. Joint School District No. 6</i>	Plaintiff
1902	<i>Sugar v. City of Monroe</i>	Plaintiff
1909	<i>Herald et al. v. Board of Education et al.</i>	Plaintiff
1913	<i>Munfordville Mercantile Co. v. Bd. Of Trustees Dist. No. 39</i>	School Board
1914	<i>Tyre v. Krug</i>	Plaintiff
1922	<i>State ex rel. Bender v. Hackmann</i>	School Board
1925	<i>Ralph v. New Orleans Parish School Board</i>	School Board
1927	<i>Mary J. Lincke v. Moline Board of Education</i>	School Board

*(table continues)*

Year	Case name	Ruling favor
1928	<i>Velton et al. v. School district of Slater et al.</i>	School Board
1929	<i>Cook v. Chamberlain</i>	School Board
1931	<i>Merryman v. School district No. 16</i>	School Board
1932	<i>Presley v. Vernon Parish School board</i>	School Board
1934	<i>Shell Petroleum Corporation v. Hollow</i>	School Board
1936	<i>Hempel v. School District No. 329 of</i>	School Board
1940	<i>Hansen v. Independent Sch. Dist. No. 1 in Nez Perce Co.</i>	School Board
1945	<i>McLang v. Harper</i>	Affirmed on both appeals
1947	<i>Caddo Parish School board v. Pyle</i>	School Board
1948	<i>Bredeck v. Board of Education of City of St. Louis</i>	Plaintiff
1949	<i>State v. Bd. Of Ed. Of Cleveland City School District</i>	Plaintiff
1950	<i>Carter v. Lake City Baseball Club, Inc.</i>	Plaintiff
1951	<i>Bd. Of Ed. Of Louisville v. Alumni of Louisville Male H.S.</i>	School Board
1953	<i>State v. Johnson</i>	School Board
1955	<i>Serich v. Struthers City Board of Education</i>	Plaintiff
1966	<i>Wayman v. Board of Education</i>	Plaintiff
1975	<i>Silverman v. Board of Education of Millburn Township</i>	School Board
1981	<i>Kiddie Korner Day Schools v. Charl. Mecklenburg Board of Ed.</i>	School Board
1986	<i>River Road Neighborhood Assoc. v. South Texas Sports</i>	Plaintiff
1986	<i>Student Coalition for Peace v. Lower Merion School District</i>	Plaintiff
1988	<i>Garnett and Smith v. Renton School District No. 403</i>	School Board
1990	<i>Decatur City Board of Education v. Aycock</i>	Defendant
1992	<i>Pell v. Board of Education in Monroe Couny</i>	School Board
1997	<i>Ceniceros v. Board of Trustees of the San Diego U.S.D.</i>	Plaintiff
1997	<i>Davidson v. Community Consolidated School district</i>	School Board
2001	<i>Gernetzke v. Kenosha Unified School District No. 1</i>	School Board
2001	<i>Hazelton Area School District v. Zoning Hearing Board</i>	School Board

### Leases

Nine of the cases studied in this section related to leasing of property by school districts. Two of the cases involved questions of liability. Although injuries and accidents occurring on school property remained outside the scope of this investigative study, *Mary J. Lincke v. Moline Board of Education* (1927) was included because it relates to a liability claim against the Board of Education for an injury sustained on property that the board had leased to a third party. The bulk of the cases in this cluster relate to the school board's authority or lack thereof to lease

school district property. Several of the cases involved citizens suing school boards regarding terms of a lease agreement, authority to enter into a lease agreement with said party, or misuse of school property.

The court answered the question concerning liability for injury directly. In the case of *Mary J. Lincke v. Moline Board of Education* (1927), a woman sued the Board of Education for slipping on steps that were school property during a period of time the property was being leased. The school board was found to be not liable as they are considered a governmental agency and not liable in tort action. In the second liability case, *Hansen v. Independent Sch. Dist.* (1940), a citizen sued the school district claiming that it was not lawful to lease a baseball field to a professional baseball club, whereby the school district was “pledging credit” to the ball club and thereby imposing liability on the school district, which was prohibited by the Idaho Constitution. The court found that the school district had not pledged any funds and the lease contract was written to eliminate district liability. Therefore, the school district had acted in a manner consistent with the constitution and the lease was permitted.

The following three cases concern the misuse of school property. In the case of *Sugar v. City of Monroe* (1902), citizens voted for a tax increase to raise money for a school auditorium. The board leased the auditorium as a theatre to a private company. The taxpayers claimed this was not the intended use of the building and the court agreed. The court concluded that at the time the electors voted to tax themselves for the new school building, they were not informed of the potential for it to be used for money-making purposes such as a theatre. In addition, the court determined that operating a theatre in direct competition with other businesses that are subject to license taxes was patently unfair. The court determined that the city lacked authority to maintain a theatre on the school premises.

Another case, *Herald et al. v. Board of Education et al.* (1909), involved the misuse of conveyed property. The conveyance granted the property to the school district to be used as a free school. The board agreed to lease a portion of the property for the purpose of producing oil and gas. The court determined that school districts have the power to make contracts related to school matters, but a contract of this type is outside of the authority of the board. A board cannot lease property for money making purposes. On the other hand, the board could sell the property as long as the proceeds are put to educational use.

The third case of this type is *Presley v. Vernon* (1932). In this case, the school was attempting to lease the property surrounding a school building in which school was conducted. The lessee intended to build a store on the property and run a cafeteria for the school. The lease agreement did not include any stipulations about how the business would operate. The court was concerned that the business could become a nuisance. The court found that the board did not have the power by law to lease ground on which public school is being conducted. It cited R.C.L. vol. 24, subject Schools, p. 585, § 34: “unimproved school lands are subject to the same restrictions as school houses and the school board cannot permit them to be used for collateral purposes, even though profitable.” Moreover, the Constitution of 1921, art. 12, § 10, and art. 4. § 12 provides, “the funds, credit, property or things of value of this state or any political corporation thereof, shall not be loaned, pledged, or granted to or for any person or persons, association, or corporation, public or private.” In short, Louisiana law precludes boards from leasing property designated for school purposes for anything beyond casual use or use that is inconsistent with the main purpose of the property.

Three other lease cases related to the board’s authority. In the case of *McLang v. Harper* (1945), a citizen sued the school board for allowing a religious group to lease a vacant building

and grounds as a community center. The court found that under Iowa statute the school board could not lease the building and grounds because they did not allow the electors to vote on the matter. In a separate statute, the board was authorized to permit the use of the school building. The “power to lease” required a vote of the electors. However, the board could authorize the use of the school without the approval of the electors. Both appeals were affirmed in this case. Under Iowa law, Code 1939, § 4371, as amended by Laws 1941, c. 166., school districts are prohibited from allowing school properties to be used for religious activities. However, in a separate section school districts are authorized to allow organizations to use school facilities if there is benefit to the community. While the board was unable to lease the school building to the Jewish Federation, and the lease was declared void, the school district was within the law to continue the use by the aforementioned organization.

The Zoning Board’s authority over the school district was the issue in the case of *Hazelton Area School District v. Zoning Hearing Board* (2001). In this case, the Zoning Board granted the School District a special exception to zoning regulations for a residential part of town, to allow the construction of a high school and athletic fields. The Zoning Board placed restrictions on the design to limit the impact on the surrounding area. The District asked for a waiver in order to upgrade the existing fields. The Zoning Board allowed it, but limited the use of the fields to practices and games only. Later, the District requested permission to rent the field to other groups without restrictions. The Zoning Board denied the request. The District appealed. In making its determination, the court had to interpret the legislature’s intent of the Pennsylvania Municipalities Planning Code Act (1968) P.L. 805, *as amended*, 53 P.S. § 10305. The court determined that a local ordinance takes precedent or supersedes a statute that is not explicitly pre-emptive. More specifically, the court determined that the Statutory Construction Act of 1972,

1 PA. C. S. §§ 1501-1991, which provides school boards the authority to lease school district property does not expressly prohibit pre-emption by local ordinances. Therefore, the court found that the Zoning Board had the authority to compel the school district to abide by local ordinances.

The issue in the case of *Carter v. Lake City Baseball Club, Inc.* (1950) was whether the school trustees had the authority to lease the school's athletic field to a professional baseball league. The citizen claimed that the lease would create a nuisance and prevent use by students. The Code of South Carolina gives permission to a school board of trustees to lease school property so they can "take care of, manage and control the school property of the school district." The court reasoned that the trustees had placed no limitations or restrictions in the lease agreement to protect school activities from interference and therefore had not followed the lease provisions of the Code of South Carolina.

The final case related to leasing school property concerns the Open Meeting Act. In the case of *River Road Neighborhood Assoc. v. South Texas Sports* (1986), citizens claimed that the school board had deceptively leased a stadium to a private corporation and released its power to manage the property. The lease gave the private corporation exclusive use of the property for 30 years with the right to extend. The school board could use the property whenever necessary. The court found that they board had exceeded its power and the public notice had been deceptive as well. The lease was void and the corporation and school board were enjoined from trying to execute any part of the lease.

Case law relating to the use of school district property, by way of lease, to individuals and organization outside of a school district's jurisdiction has shown there to be a lack of consistency in court findings. In some of the decisions, courts seem to have taken the position

that the use of school district property for anything other than its intended use of educating students, formally represented a deviation from the purpose of a free education, and therefore was not allowable. In other cases, where a board's authority to lease school property to others was challenged, the court referred to applicable state law. In the cases where state law grants boards of education the authority to enter into a lease agreement, and stipulating that the law and related procedural processes were followed, the courts have ruled in favor of the defendant school districts. Likewise, when the aforementioned conditions have not been met the courts have found in favor of the opposing parties.

### *Equal Access*

Five of the cases studied regarding use of school property dealt with issues related to the Equal Access Act or public forum doctrine. Three of the cases dealt with non-secular issues and two of the cases dealt with secular issues. The reasoning for all of the cases was based on the First Amendment and subcategories herein such as Equal Access Act, public forum doctrine, and the Establishment Clause.

Two of the three non-secular cases dealt with the request for use of a school classroom for a meeting place for a student religious group. In the case of *Garnett and Smith v. Renton School District No. 403* (1988), a religious group was denied permission to use a classroom as a meeting space. The students filed suit claiming their First Amendment rights had been violated. They believed the Equal Access Act required the school to grant them permission to use the space. The school board and principal denied the group's request on the basis that it was a violation of the Establishment Clause. The school board proved that the high school was not a

limited open forum and in fact only allowed approved “co-curricular” activities to meet in the school. The court ruled in favor of the school board.

The second non-secular case, *Ceniceros v. Board of Trustees of the San Diego U.S.D.* (1997), resulted in a favorable ruling for the plaintiff. In this case, the student requested permission for a religious club to meet during lunch. The school denied the request. The student filed suit claiming a violation of the Equal Access Act. The court held that the school was in violation of the Equal Access Act. By allowing other non-curricular groups to meet, the school had created a limited open forum and therefore could not deny this request. The Equal Access Act holds that it is unlawful for any public secondary school that receives Federal financial assistance and has limited open forum to deny “equal access.”

One of the non-secular cases reviewed dealt with whether Christian symbols could be displayed on school walls. In the case of *Gernetzke v. Kenosha Unified School District No. 1* (2001), student groups were asked to paint murals in the school hallways. A religious student group submitted a mural containing Christian symbols, a cross, a Bible, and a Bible verse. The principal approved the entire mural with the exception of the cross. The principal argued that allowing such a symbol would mean that he might have to allow murals with Satanic or neo-Nazi symbols, which seemed to be a reasonable assumption, since students belonging to these groups attended the school. The students filed suit claiming a violation of their religious freedom. The court reasoned that the school administrators acted within the scope of their employment. The principal’s decision to forbid the cross was protected under the Act by the provision that, “Nothing in the Act shall be construed to limit the authority of the school . . . to maintain order and discipline on school premises” (20 U.S.C. § 4071(f)). The court ruled in favor and held that the principal was simply trying to maintain order.

The remaining cases in the equal access cluster are secular cases. The first case, *Student Coalition for Peace v. Lower Merion School Dist.* (1986), was filed by a group wishing to use a school stadium and gymnasium for a political meeting and peace demonstration. The board denied the request. The court found that a limited open forum existed in the gymnasium, since it had been used for non-curricular events in the past, but it did not in the stadium. The ruling was for the plaintiff.

The second case of this type, *Davidson v. Community Consolidated School District* (1997), was filed by school board candidates. The candidates claimed that the local Union had been allowed to use the school system's internal mail system, while they had not. The candidates claimed that by refusing to allow them use of the internal mail system, their First and Fourteenth Amendment rights had been violated. The court reasoned that the Union was the exclusive bargaining representative and was therefore permitted to use the internal mail system to express its view of matters within the scope of its representational duty. There was no evidence that the school district sponsored or opposed any candidate. The ruling was for the board.

The law does not prohibit school districts from allowing the use of school facilities. However, in doing so, school boards create the potential for litigation involving equal access and public forum doctrine. Furthermore, school districts allowing student groups to meet at school during the school day or during non-instructional times must allow equal access if they have established a limited open forum.

#### *Discretionary Authority*

Eight cases were reviewed regarding the discretionary authority of school boards related to the use of school property. In five of these eight cases, the court ruled in favor of the school

board. Two of these cases dealt with the school board's discretion in proper use of facilities after normal school hours. In the first case, *Merryman v. School Dist. No. 16* (1931), an owner of a local dance studio had been charging groups to use his facility for their functions. The local school board began leasing a newly constructed building for public functions such as dances, etc. The business owner filed suit, claiming the board exceeded its authority in allowing functions in a public building. The court reasoned that as long as the property was maintained and not defaced or destroyed, the school board had discretion to determine how to use the property. The court ruled in favor of the board.

Another case involving proper use of facilities after normal school hours was *Kiddie Korner Day Schools v Charlotte Mecklenburg Board of Education* (1981). In this case, the local school board began operating an after school daycare program at Dilworth Elementary. The program was open to all students in said school for a fee. Kiddie Korner, a private daycare, filed suit seeking to enjoin the advancement of the after school daycare program. They claimed the board lacked the statutory and constitutional authority to operate the program. The plaintiff alleged the program violated free public education guidelines, created unauthorized competition, misappropriated public funds, and lacked authority to maintain the program. The court disagreed. The court reasoned that the school board had acted within its discretion and did not violate any laws or regulations.

Three other cases in the discretionary authority cluster were favorable for the boards of education. One such case is *Velton et al. v. School Dist. Of Slater et. al.* (1928). In this case, taxpayers brought suit against the school district to prevent them from moving the high school to the elementary school and vice versa. The court found that to do so was not an abuse of the school board's discretionary authority.

Another favorable case for school boards was *Board of Education of Louisville v. Society of Alumni of Louisville Male High School* (1951). The local board desired to convert the male high school to a co-educational facility. The Society of Alumni claimed the board was outside its discretionary authority because the land had been conveyed for a special purpose. The court reasoned that the Society of Alumni lacked the power to invoke the covenant. The former covenant could not be invoked and was not in the best interest of the pupils of the district. The court ruled in favor of the board of education.

In a related case, *State ex rel. Bender v. Hickman* (1922), the issue was whether a school board had the authority to change the location of a high school or school facility without the vote of citizens. The court held that the board did have the authority to make such changes without the vote of the citizens.

In the last three cases in this cluster, the court ruled in favor of the plaintiffs and found that the board lacked the discretionary authority in these cases. *Decatur City Board of Education v. Aycock* (1990) was a case of conflicting authority. The Department of Human Resources (DHR) wished to conduct student interviews in the school. The board had a policy that a school employee must be present in all such interviews. So, the board denied the request to use the school for interviews. The court reasoned that in such a case, the board's power is subordinate to DHR and the laws protecting children from child abuse. The court found no reasonable justification for the board policy and invalidated it.

In the case *Pell v. Board of Education of Monroe County* (1992), the local board had work extensively for 2 years on a Comprehensive Education Facilities Plan (CEFP). Included in the CEFP were plans for closing, building, and reorganizing schools. The CEFP was approved and awarded approximately \$8 million in grants. Five days after the term for two new board

members began, the progress on the project was delayed. The new board members initiated board action not to move forward. Local citizens filed an action seeking a mandamus to compel the board to move forward. The court held that the board had acted in an arbitrary and capricious manner and risked losing millions of dollars in funding. The court determined the board had abused its discretion and therefore a writ of mandamus was issued to compel the board to act.

The final case of discretionary authority is the case of *Bredeck v. Board of Education of City of St. Louis* (1948). In this case, the plaintiff, the Health Commissioner of the City of St. Louis, requested permission to inspect the school cafeterias. The board refused, claiming that Bredeck had no authority to inspect the school cafeterias. The court held that the board and schools were not exempt from ordinances that regulated food/cafeteria health and were subject to inspection and approval to acquire a permit for such.

An analysis related to the discretion of the authority of the board regarding the use of school property shows that school boards are provided a large degree of discretion by state statutes. This is particularly true when it comes to making allowances for incidental and occasional use of school facilities outside of the school day at times when it does not interfere with the primary function of educating students. Secondly, state statutes typically provide boards with the authority to make decisions about location, configuration, and specific school usage of facilities in inventory. It is notable, however, that some state statutes require an affirmative vote of the electorate to support such decisions. Finally, the discretionary power of the board is restrained as it pertains to granting other agencies unfettered access to school premises. For example, in the cases reviewed, the authority of both the Department of Human Resources and the health inspector supersedes the authority of school boards to restrict access so that these agencies are able to carry out the functions prescribed to them by law.

### *Joint Use*

Three cases were reviewed that relate to joint use of school property. In two of these cases, the board of education was prohibited from joint use of school property. In one case, *John G. Spencer v. Joint School District No. 6* (1875), a taxpayer filed suit to restrain the board from leasing the school building for private purposes. The school building was being jointly used by the elementary school and a private group. The plaintiff claimed the school was being defaced and children's supplies were being ruined by the lessee. The court held that the schoolhouse cannot be used for private purposes. In making its determination, the court found that the lease violated the rule that public funds cannot be used to advance private purposes. The Court ruled in favor of the plaintiff.

In a related case, *State v. Board of Education of Cleveland City School District* (1949), a lease was entered into by the Board of Education and the County Welfare Board. The lease gave the Welfare Board permission to use a wing of the school as a receiving home for neglected children. The court determined that it is the Board of Education's responsibility to preserve the availability of school property for school purposes. The court ruled in favor of the plaintiff.

In the case of *Munfordville Mercantile Co. v. Board of Trustees Dist. No. 39* (1913), a taxpayer brought suit to enjoin the issue of bonds to raise money to build a new school. The Board of Trustees and the Board of Education had a contract by which the Board of Education would maintain a high school in the grade school building and the two would be conducted jointly. The contract included an agreement between the two Boards to co-fund the construction of a new school. The plaintiff claimed that when money is raised from taxes to build a school, the school should be used solely for that purpose. The court reasoned that the Board of Trustees and Board of Education have joint responsibility for providing educational facilities. In fact, such

authorities uniting for the purpose of maintaining a high school and joint use of the facility is supported under KY St. § 4426(a), subsec. 8. The court ruled in favor of the Board.

School boards may, in some states, enter joint use agreements with other agencies to maximize the use of school district property. Such authority is either restricted or permitted in state statutes. Based on the cases reviewed, the authority to enter into joint use agreements must follow a couple of legal principles. First, state statutes must provide the requisite authority to boards of education to enter into these types of agreements. Secondly, the joint use of a facility may not impede its intended use.

### *Abandonment*

Three cases were reviewed that relate to the abandonment and nonuse of school property. The first case, *Silverman v. Board of Education of Millburn Township* (1975), involved the closing of an elementary school and leasing of said property to the State Department of Education for a school for the hearing impaired. Citizens instituted a civil action to stop the closing of the school. The citizens claimed they were bondholders and had interest in the property. They asserted that it was not the Board's decision to close the school. The court reasoned that the citizens had properly filed suit, but the act of discontinuing a school was within a Board's jurisdiction by New Jersey law. In addition, Boards were given authority to sell or lease property with certain restrictions. The taxpayers would not be adversely impacted since the lease of the property would actually benefit the school system and the property would still be used for educational purposes. The court ruled in favor of the Board of Education.

In a similar case, *State v. Johnson* (1953), a trustee decided to consolidate two schools due to declining population. The trustee closed one school and sent the students to the other

school. A citizen brought action to compel the reopening of the abandoned school. The court reasoned that the trustee acted within his powers and the decision was not an abuse of discretion. The court ruled in favor of the school (trustee). In making its decision, the court relied on Burns' Ann.St. § 28-2410, which provided school township trustees the general power to manage education matters within their respective townships. This general power gives trustees discretionary authority to abandon school buildings as deemed appropriate.

The last case in the abandonment cluster is the case of *Shell Petroleum Corp. v. Hollow* (1934). In this case, through a series of conveyances, Shell acquired the rights to a 10-year lease that included the one acre in question in this case. At one time, the acre of the land had been conveyed to a school. Since that time, the school closed and the building was removed, which meant the land reverted to the owner of the dominant tract. Heirs of the previous owners declared the one acre belonged to them because they wanted the right to drill for oil on the acre. Shell filed suit claiming they had the exclusive right to the property because they had a 10-year lease agreement. The court held that the one acre in question belonged to the owner of the dominant tract who had agreed to lease the property for drilling. The ruling was for the plaintiff. The legal principle binding the court's decision revolved around a reversionary clause established in the original conveyance and the deed to the school district. It established that once the school district ceased to use the property for school purposes it reverted to the larger tract.

Case law indicates that states provide school districts with authority to consolidate or abandon use of school facilities as they find necessary. The courts have determined that the use of public money to finance schools does not give taxpayers authority in making a determination to cease use of a school. This authority was vested with the board of education in the cases

examined. Moreover, case law supported the reversion of land, that was conveyed to schools for school purposes, as defined by the grantor in the conveyance.

### *Nuisance*

Two cases were reviewed in this cluster. One of the cases involves a school board's claim of nuisance and the other is a claim against a school board. The first case, *Caddo Parish School Board v. Pyle* (1947), resulted when the school board filed an action to enjoin Pyle from operating a mill near school property. The school board claimed the mill interfered with the operation of school. Pyle alleged that the school board lacked capacity to file suit. The court held that the school board had capacity to prosecute the suit according to state statute. For 14 years the school had made use of the property in question. The court determined that the school had acquired title through adverse possession and ruled in favor of the board.

A second case in this cluster is *Wayman v. Board of Education* (1966). In this case, a homeowner claimed that a school parking lot was creating a nuisance on his property. He alleged that the board did not maintain the lot and large amounts of dust were stirred up that settled on his property. He filed suit seeking an injunction to restrain the use of the parking lot. The court reasoned that as governmental agencies, school districts are protected from claims of negligence, but claims of nuisance are different. The court determined that equitable action was required to enjoin the nuisance.

School boards have the right to protect their property from nuisances in the same way as other landowners do. In short, they have the right to sue and be sued on such matters, and nuisance law and equity applies to school boards in the same way it applies to other property owners.

### *Selling Items to Students*

Four cases were reviewed in this cluster that relate to selling items to students on school property. In three of these cases, the ruling was in favor of the board or school. The first case, *Cook v. Chamberlain* (1929), resulted when a taxpayer brought suit against a principal to restrain the school from selling items to students in a supply station located in the school. Only essential items were sold in the school supply station and they were sold at cost. The court ruled for the school principal since there was no evidence of personal gain.

In a similar case, *Hempel v. School District No. 329 of Snohomish County* (1936), the Student Association was selling lunches and candy to students for a small profit. The profit was returned and expended on the student body by the Student Association. The court held that the school district had the authority to permit the sale of lunches and candy to students.

In the case *Ralph v. New Orleans Parish School Board* (1925), a business owner filed action to restrain a school from allowing two janitresses at the school to sell lunches to teachers and students for a profit. The court reasoned that the sale of lunches on school property was incidental to the main purpose of the school and was not an unlawful use of the school buildings. The court differentiated this case from the case of *Sugar v. City of Monroe* (1902), in which the school building was being used as a public theatre and not related to the main purpose of the school. The ruling was in favor of the school board.

The final case in this cluster, *Tyre v. Krug* (1914), is the one case in which the ruling was favorable for the plaintiff and not the school board. In this case, a taxpayer brought action requesting that five principals be enjoined from operating stores in the school buildings. The plaintiff claimed that the principals were using the building with cost, making a profit, and injuring him individually. The first court determined that the taxpayer had improperly brought

suit and dismissed the action. The plaintiff appealed. The higher court reasoned no authority could be found in the legislation to permit schoolhouses to be used to operate private business. Therefore, the court held that school buildings could not be used for anything other than school purposes, aside from those contained in the statutes.

School districts may sell items to students on school grounds during and after the school day to benefit the school or students. However, case law suggests that school officials may not reap personal gain from such action. Case law distinguishes the times when school districts are authorized to sell items to students and others. Three of the four cases examined dealt specifically with the school district or its agents selling items to students for convenience with nominal profit to the district as a form of customer service. In the last case, a group of principals were operating a school store, but were making personal profit as individuals and had an unfair business monopoly, as vendors did not have access to students during the school day. The courts concluded it was permissible to sell items at school as long as school personnel do not reap personal gain.

### Disposition

The cases in this section are specific to litigation surrounding the disposal of school district properties. A total of 23 cases were reviewed in this section. The cases were grouped into clusters in order to compare and contrast key facts, holdings, and court reasoning. Table 5 provides an overview of the cases in this section. The pages that follow provide an analysis of the cases reviewed. Many of the cases were reversionary cases in which property was conveyed to a school district for school use. Reversionary cases involve conveyances that are conditional. In the event the conditions fail to be met, the property reverts as defined in the conveyance and

deed. Several cases concerned perpetual leasing of school property to other entities. Some of the cases dealt with the conveyance of property to other governmental agencies and the sale of property. The cases related to disposition of school district property are grouped for study just as in the acquisition and use of school property sections of this paper. To better determine trends and issues regarding the disposition of school district property, cases are grouped into the following clusters for future analysis. The clusters are as follows: (1) Reversionary Action, (2) Governmental Agencies, (3) Sale of Property, and (4) Leasing Property. After reading and analyzing the 23 cases in this section, groups were determined based on the issue(s) within the cases, which were then given the cluster names above in 1-4.

Table 5

*Final Court Decisions: Disposition of School Property*

Year	Case name	Ruling favor
1909	<i>Mahoney v. Board of Education</i>	School Board
1913	<i>McElroy v. Pope</i>	School Board
1916	<i>Board of School Dir. Of Caldwell Parish v. Meridith</i>	School Board
1920	<i>Dick v. Darden</i>	Plaintiff
1931	<i>Harvey v. Board of Public Instruction for Sarasota County</i>	Plaintiff
1936	<i>Boyd v. Ducktown Chemical and Iron Co.</i>	Defendant
1936	<i>Kennedy v. Kennedy</i>	Defendant
1940	<i>School Dist. No. 1, Multnomah Co. v. Multnomah Co.</i>	School Board
1941	<i>Prescott Comm. Hospital v. Prescott School Dist. No. 1</i>	School Board
1942	<i>United States v. 1119.15 Acres of Lane</i>	Plaintiff
1943	<i>Boutwell v. County Board of Ed. Of Escambia Co.</i>	School Board
1943	<i>Rustin v. Butler</i>	Defendant
1944	<i>Moss v. Crabtree</i>	Plaintiff
1945	<i>Allemania Fire Ins. Co. v. Winding Gulf Collieries</i>	School Board
1947	<i>Evangelical St. John's Church v. Otto Ind. School dist.</i>	Plaintiff
1982	<i>Bd. Of Ed. Of U.S.D. 512 v. Vic Regnier Builders, Inc.</i>	School Board
1988	<i>Yeshiva v. Bd. Of Ed. Of East Ramapo Central Sch. Dist.</i>	Plaintiff
1991	<i>Wilson Coalition v. Mayor &amp; Comm. Coun. City of Summit</i>	School Board
1994	<i>Bonnell v. Regional Bd. Of School Trustees of Madison Co.</i>	School Board
1995	<i>Wilcox County School District v. Sutton</i>	School Board
2003	<i>Abshire v. Vermilion Parish School Board</i>	Plaintiff
2006	<i>Ator v. Owasso Independent School District</i>	Plaintiff
2009	<i>Reese v. Charlotte Mecklenburg Board of Education</i>	School Board

### *Reversionary Action*

Of the 23 cases in this section, 11 related to reversionary actions. Three of these cases dealt with trustees' claims to property. In none of these cases did the court find in favor of the trustees. In the first case, *Board of School Directors of Caldwell Parish v. Meridith* (1916), property set aside by the Legislature for a school charter was to be liquidated. The Legislature established a charter for the establishment of a school and trustees. Later, the Legislature amended the charter by assigning an expiration date. The local school board learned that the property had been sold and brought suit to recover the property. The trustees claimed that they were the rightful liquidators of said property. The court disagreed and assigned a judicial liquidator and determined that any proceeds should be given to the local school board for educational use. The court premised its decision on their interpretation of the legislature's intent relating to the original conveyance. It concluded that the intent of the legislature in conveying the property was to benefit the public education system. As a result, it determined that proceeds from the property's disposal should be used for that same purpose; to benefit the local public education system.

Similarly, in *Rustin v. Butler* (1943), land was conveyed to trustees for the purpose of building a schoolhouse. The school was built and some years later relocated. The defendant (heir of the grantor) later began to remove the school from the property. The plaintiff (trustees), tried to enjoin him from removing the school. The court determined that the property had reverted to the grantor or his heirs based on the language of the conveyance which specified upon discontinued use of property for school use, the property would be forfeited by the school district. Significantly, according to the court's interpretation of the conveyance documents, so

too were the improvements to the property, thereby making the schoolhouse on the premises the property of the defendant.

Another reversionary case involving trustees is *Dick v. Darden* (1920). In this case, the trustees desired to move the school situated on conveyed property. In an effort to prevent the land from reverting to the grantor, they claimed adverse possession as they had been in possession of the land for approximately 60 years. The actual deed could not be located so the court allowed secondary evidence to be presented. The court determined that the original deed included a reversionary clause and therefore the land must be reverted to the grantor.

Two of the reversionary cases dealt with whether the land reverted to the original grantor. In the first of these cases, *Kennedy v. Kennedy* (1936), a one acre tract was given to be used for school purposes. The grantor sold the remaining property (539 acres). The plaintiff claimed that since the school was abandoned, the property reverted to him, the heir of the original grantor. The court determined that the grantor had conveyed the right to the property and released his reversionary interest in the school property in the sale of the 539 acres. The court said the grantor had conveyed the property to the grantee. In this case, the court concluded that the benefit associated with an enactment of the reversionary clause, in the original conveyance, was attached to the dominant parcel of property from whence the conveyance originated.

In *Moss v. Crabtree* (1944), one half acre was conveyed to be used for school purposes. The agreement included a provision for the property to revert back to the larger tract (40 acres) should the property cease to be used by the school. The school abandoned the land and the plaintiff claimed it belonged to him since he now owned the larger tract of land. The court held that since the land was now abandoned by the school, it reverted to the owner of the larger tract as stipulated in the conveyance. The ruling was in favor of the plaintiff.

Another reversionary case, *McElroy v Pope* (1913), deals with the dispute over the purchase and sale of property. The plaintiff claimed that his reversionary interest in a property entitled him to the proceeds a school obtained from the sale of the property. The Board of Education had purchased the property from the plaintiff and then sold the property. The court determined that the property had been purchased for “valuable consideration” and there was no provision in the deed for a reversion of the property. The court ruled in favor of the Board of Education.

Taxpayers asked for a court injunction to prevent the demolition of a school in the case of *Wilcox County School District v. Sutton* (1995). The first court claimed that the deed created a charitable trust and the school district could not dispose of the property without the approval of the Superior Court. The Court determined that the deed made no reference to a trust. It merely conveyed the property to the city. The taxpayers wanted the property to revert to the city because they claimed it was to be abandoned. In fact, only the building was being removed. The property remained a portion of a school campus and therefore was not abandoned. The Georgia Constitution gives authority to control county schools to the school board. So, the court ruled in favor of the Board.

In one reversionary case, *Boutwell v. County Board of Ed. of Escambia Co.* (1943), a grantor tried to unlawfully detain board property. A small tract of land was given to the school board in order to build a schoolhouse. A schoolhouse was built and the grantor asked the board for a key to the school so it could be used as a church in the summer months. The board refused and the grantor was unhappy. The grantor then deeded the property to the plaintiff. The court determined that the deed could not be submitted in court and all that mattered was the ownership

at the time of the detainment. The court ruled in favor of the board and found that the plaintiff was unlawfully detaining board property.

In the case *Ator v. Owasso Independent School District* (2006), 7 acres of land were given to the school district to be used exclusively in the athletic program with very specific limitations set forth in the conveyance. The school district did not follow the terms of the conveyance. Ator, the heir of the grantor, brought suit against the school district for this reason. The court found that the school was not using the property as it was intended. The court reverted the property to its original owner.

Many times, particularly when a piece of property is given, bequeathed, or donated to a school district, a conveyance includes a reversionary clause in the deed. The courts have recognized the legitimacy of such clauses and historically have ruled that the property be returned as delineated in the conveyance documents. This case made it clear, that unless expressly delineated otherwise, the property, subject to reversion, returns to the larger or dominant parcel from whence it was conveyed. It makes no difference if ownership of the larger parcel has changed hands since the original conveyance. In addition, all improvements on the conveyed property also become the property of the owner of the reverted property unless the original conveyance expressly provides otherwise.

### *Governmental Agencies*

Case law substantiates that boards of education have the authority to convey school district property to other governmental entities including city, county, and state governments. This study highlights four cases as examples of such authority. The first of these cases is *Wilson Coalition v. Mayor and Community Council of the City of Summit* (1991). In this case, the city

bought land for a schoolhouse. The district built a school on the property and the city retained a portion of the property. Eventually, the district closed the school, moved the central office there, and leased unused space. The district finally conveyed the property back to the city. The city accepted it and planned to sell it to private developers. Taxpayers sued, claiming the board could not give it to a city and the city could not sell it. The court held that it was within the Board's authority to convey the property to the city. The court based its ruling on language from N.J.S.A.18A 20-6, which authorizes boards of education to dispose of land no longer in use by private sale to a political subdivision of the State and to do so for nominal consideration.

*Reese v. Charlotte Mecklenburg Board of Education* (2009) is another case related to governmental entities. The Board in this case decided to relocate their central offices. They decided to transfer the property of the former central offices to the county. The county then entered into an agreement with a private developer to develop the transferred property. The Board received \$13 million and alternate central office space. A taxpayer sued, claiming the Board had acted outside of its statutory authority. He claimed that the board transferred the property knowing that it was going to be sold to a third party. The court reasoned that the Board had acted within the power afforded to them in the North Carolina statutes which provides governmental agencies, inclusive of school boards, the ability to convey property to other governmental agencies, with or without consideration. This includes the power to lease, sell, or exchange property.

A school district conveyed property to the county so the National Guard Armory could expand its facilities and better serve the public in (*School Dist. No. 1, Multnomah Co. v. Multnomah County*, 1940). After 7 years, no progress had been made toward the expansion, so the Board sued to reclaim the property that had been conveyed to expand the Armory. Oregon

law allows the transfer of property to another governmental agency as long as the property continues to be used for a public purpose. The court determined that the county had not fulfilled the conditions of the transfer and met Oregon state law, which required the property to be put to public use. The property reverted to the school board.

In the case of *Harvey v. Board of Public Instruction for Sarasota County* (1931), the Board intended to convey a portion of land at no cost for the building of a post office. The construction of the post office would serve to raise the value of surrounding Board property. The trial court upheld the conveyance, but the appellate court did not. The court ruled that the Board may not convey property for enhancement of value of other property. The Board holds property in trust and must conduct business with this in mind. The court ruled that the Board has a duty to dispose of property only upon “adequate consideration.” So the Board cannot give away property. The court ruled for the plaintiff.

School districts may convey property to other government entities as provided for in the applicable state statutes. The conditions relating to such conveyances vary by state. Some states authorize conveyances to other governmental units for nominal consideration. Case law suggests that property transfers to other governmental or quasi-governmental agencies require the property continue to be used for the good of the public. Other states require such conveyances be made as sales-purchase agreements and stipulate that fair market value be received regardless of the type of organization.

### *Sale of Property*

State statutes provide authority to boards of education to dispose of school district property in a proper manner. Although the nuances vary from one state statute to the next, the

disposal of school district property is largely a discretionary function of school districts. This study identified five court cases that relate to the sale of school property. However, they address unique issues, circumstances, and contexts that provide a more comprehensive understanding.

Boards of Education may sell school property even when property had been acquired through an eminent domain proceeding. In *Board of Education of Unified Dist. 512 v. Vic Regnier Builder, Inc.* (1982), the Board of Education had vacated a school facility that was no longer needed. The Board moved to clear title to the property so that they could commence with its disposal by means of sale and in accordance with applicable state laws. The previous land owner filed a suit claiming the Board had no authority to sell the property given that it was acquired through an eminent domain proceeding. Case law indicates that with the exchange of consideration, such properties are permitted to be sold even in the absence of disclosure to the contrary on the deed. This decision was congruent with a previous ruling in *United States v. 1119.15 Acres of Land* (1942). In that case The Federal Government began eminent domain proceedings to acquire a parcel of land owned by a school district. This same property had been conveyed to the school district and contained a reverter in the deed. When the Federal Government began eminent domain proceeding to acquire the property, the previous land owner claimed he was entitled to the proceeds and filed suit. The court rejected the claim of the previous landowner. The court reasoned the property was owned by the school district absent of any immediate plans to abandon the property. Given that the school district was continuing to use the property for its intended purpose, it was apparent to the court that no plan to abandon it was being contemplated by the board. Therefore, the court concluded that a possibility of future abandonment did not position the heirs of the grantor to any of the proceeds stemming from an eminent domain action between the Federal Government and the school district.

In another case, *Evangelical St. John's Church v. Otto Ind. School Dist.* (1947), a school district and a church worked collaboratively to build and use a building. The school district used the building for more than 3 decades. Ultimately, the building was sold by the church. The school district sued, claiming entitlement to the money received, premised on the argument that the building was owned by the board. Given that the board had abandoned the property, the court ruled that the board had forfeited its entitlement to any of the proceeds.

In still another case relating to the sale of school district property, the purchaser of such property filed a suit against the Board of Education for failing to disclose that the building contained asbestos (*Bonnell v. Regional Board of School of Madison County*, 1964). The school district was not required to make that disclosure.

The cases analyzed in this portion of the study indicated that school districts have the authority to sell school district property. This authority is vested in boards by state law. The means by which this can be accomplished vary by state. Case law showed that school districts selling property must receive adequate consideration which has been interpreted as fair market value by the courts. In addition, litigation relating to a board's obligation to investigate, report, and disclose potential hazards has resulted in positive rulings in favor of school districts.

### *Leasing Property*

School districts that vacate school property often explore the option of leasing their surplus property to others. The courts have generally found school districts can lease properties. However, case law indicates the need to navigate such leases carefully and after considerable attention to state law, local ordinances, and details of the existing deed.

For example, in *Abshire v. Vermillion Board of Education* (2003), the board of education passed a resolution authorizing the lease of a right-of-way for a local company to build a canal. Subsequently, the president of the board executed a flawed “cash deed” that exceeded the scope of the authority he had been formally provided by the Board. This transaction was flawed because the board only authorized its president to complete the lease transaction. Sometime later, when the Board tried to collect lease payments, a dispute arose between the parties. The local company claimed it owned the property and presented a “cash deed” as evidence of such. The school board presented their records, which authorized the president to execute the lease agreement. This action by the board was later determined by the court to be within its authority. The court determined that the board president lacked authority to execute the purported sale and declared it void. It stated that the president only possessed the authority expressly provided by the body of the board.

In another case, *Prescott v. Hospital* (1941), the courts established that a board of education cannot lease a property *without fair consideration* from the lessee. In this particular case, the board failed to get ample consideration making the lease null and void.

However, it is not sufficient to get any amount of consideration for a lease to be declared valid. In *Yeshiva v. Board of Education* (1988), the court declared that the school board had acted arbitrarily and capriciously when it failed to accept the highest bid responding to an advertisement to lease a vacated school building. In short, case law indicates that school boards must obtain fair market price when leasing school district property. More importantly, the board cannot arbitrarily accept a lease agreement from someone that did not win the related bid as advertised

In another case relating to leasing school district property where the legislature conveyed property for a school, the authority to lease such property rests with the body that conveyed it; therefore, making it a requirement for the board of education to get legislative approval (*Mahoney v. Board of Education*, 1909). In the aforementioned case, the state legislature conveyed a parcel of land to a school district so a school could be constructed on it. At some point later, the school district ceased using the school. It attempted to lease the school. The court determined that the authority to lease the school rested with the legislature since the property the school was built on was conveyed by the legislature to the school board.

### Conclusion

Acquiring, using, and disposing of school district property present complex challenges for school officials. The cases reviewed in this chapter of the study indicate school district administrators must be attentive to state law, local regulations, and legal documents relating to the conveyance of property. Failure to do so has the potential to result in costly legal disputes, that, according to the cases reviewed, often results in victories for the school district but nevertheless require considerable time, effort, and resources to resolve. The cases reviewed in chapter IV largely confirm that the school district is vested with broad discretionary authority by state statutes to manage this function of school administration. However, state statutes differ, with some being more restrictive than others. Some states grant absolute authority to school boards while others require that the school board attain approval from the electorate.

## CHAPTER V

### SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

#### Introduction

The purpose of this study was to conduct a thorough analysis of relevant issues regarding the acquisition, use, and disposition of school property. Presently, there are no known studies covering this specific topic in publication. This chapter incorporates a summary of findings as they pertain to the established research questions. In addition, it contains conclusions based on the review and analysis of case briefs highlighted in chapter IV. This chapter concludes with recommendations for future study so that school administrators can make informed decisions about acquiring, using, and disposing of school district property.

This study involved classifying 84 court cases involving school district property. The cases were classified by the following subtopics:

1. Acquisition of school district property
  - a. General Authority
  - b. Selecting Property
  - c. Purchasing Property
  - d. Levying Taxes and Fees
  - e. Selling Bonds
  - f. Eminent Domain
  - g. Leasing Property
  - h. Other Case

2. Use/Nonuse of school district property
  - a. Leases
  - b. Equal Access
  - c. Discretionary Authority
  - d. Joint Use
  - e. Abandonment
  - f. Nuisances
  - g. Selling Items to Students
3. Disposition of school district property
  - a. Reversionary Action
  - b. Governmental Agencies
  - c. Sale of Property
  - d. Leasing Property

Aside from categorizing based on the issue classifications delineated above, the cases were clustered by subtopics and analyzed based on key facts, holdings, and court reasoning. The aforementioned processes enabled me to compare and contrast the data sources with one another.

### Summary

The research questions established in chapter I of this study guided the analysis of the cases included in chapter IV. In the pages immediately following, the researcher has responded to the research questions based on findings from the study.

1. What issues arose in cases involving acquisition, use, and disposition of public school property?

As a result of reviewing and analyzing the cases selected for this study, which were presented in the previous chapter, a number of issues were identified as being relevant to understanding the law as it pertains to the acquisition, use, and disposition of school district property. One such issue pertains to litigation challenging the statutorily provided authority vested in boards of education to conduct property transactions. Case law exists as a result of boards of education being challenged alleging that such authority was absent in the statutes, misinterpreted as not being ministerial or discretionary authority or by an abuse of this authority.

Based upon the records of the cases reviewed in this study, state statutes provide the basis of authority for school districts to acquire new properties and facilities. The particulars of such authority are unique to each individual state constitution and related statutes. For example, The Code of Alabama (1905) §16-8-40 provides the following:

- (a) The county board of education shall have the right to acquire, purchase by the institution of condemnation proceedings if necessary, lease, receive, hold, transmit and convey the title to real and personal property for school purposes.
- (b) It may sue and contract. All contracts shall be made after resolutions have been adopted by the board and spread upon its minutes.
- (c) All processes shall be executed by service on the executive officer of the board (School Code 1927, §132; Acts 1933, Ex. Sess., No. 87, p. 81; Code 1940, T. 52, §99.).

Another state has similar provisions for acquiring property in their state statutes.

Florida's Title XLVIII of the K-20 Education Code, Stat. §1003 Section 2 states,

District school boards are constitutionally and statutorily charged with the operation and control of public K-12 education within their school district. The district school boards must establish, organize, and operate their public K-12 schools and educational programs, employees, and facilities . . . (f) Facilities and school plant.

- 1. Approve and adopt a districtwide school facilities program, in accordance with the requirements of chapter 1013.

2. Approve plans for locating, planning, constructing, sanitating, insuring, maintaining, protecting, and condemning school property as prescribed in chapter 1013.
3. Approve and adopt a districtwide school building program.
4. Select and purchase school sites, playgrounds, and recreational areas located at centers at which schools are to be constructed, of adequate size to meet the needs of projected students to be accommodated.
5. Approve the proposed purchase of any site, playground, or recreational area for which school district funds are to be used.
6. Expand existing sites.
7. Rent buildings when necessary.
8. Enter into leases or lease-purchase arrangements, in accordance with the requirements and conditions provided in s. 1013.15(2).
9. Provide for the proper supervision of construction.
10. Make or contract for additions, alterations, and repairs on buildings and other school properties.

In Arizona, school districts have the authority to acquire school property when authorized by voters. Arizona Revised Statutes--Title 15 Education--Section 15-341 (1990), General powers and duties; immunity; delegation, subsection A, paragraphs 8-12 provide school districts with the authority to

8. Construct school buildings on approval by a vote of the district electors.
9. Make in the name of the district conveyances of property belonging to the district and sold by the board.
10. Purchase school sites when authorized by a vote of the district at an election conducted as nearly as practicable in the same manner as the election provided in section 15-481 and held on a date prescribed in section 15-491, subsection E, but such authorization shall not necessarily specify the site to be purchased and such authorization shall not be necessary to exchange unimproved property as provided in section 15-342, paragraph 23.
11. Construct, improve and furnish buildings used for school purposes when such buildings or premises are leased from the national park service.
12. Purchase school sites or construct, improve and furnish school buildings from the proceeds of the sale of school property only on approval by a vote of the district electors.

Chapter IV contained an analysis of 25 cases related to the acquisition of school district property. They well established the statutory authority of boards to acquire property. *In Kramer v. Board of Education, City School District* (1972), a taxpayer filed a motion to enjoin the Board of Education from purchasing a parcel of land. The Petitioner argued that the Board had no

authority to make such a purchase independent of the electorate. The Court found the petitioners argument to be terminally flawed given CPLRn7801 et. seq, Education Law §§ 2511 and 2512 subds. 2, 6 bestow on boards of education the power to do so.

State laws require school boards to use school district property to advance public education. The Michigan Revised School Code of 1976 Act 451, General Powers, Section 380.11a states:

3) A general powers school district has all of the rights, powers, and duties expressly stated in this act; may exercise a power implied or incident to a power expressly stated in this act; and, except as provided by law, may exercise a power incidental or appropriate to the performance of a function related to operation of the school district in the interests of public elementary and secondary education in the school district, including, but not limited to, all of the following:

- (a) Educating pupils. In addition to educating pupils in grades K-12, this function may include operation of preschool, lifelong education, adult education, community education, training, enrichment, and recreation programs for other persons.
- (b) Providing for the safety and welfare of pupils while at school or a school sponsored activity or while en route to or from school or a school sponsored activity.
- (c) Acquiring, constructing, maintaining, repairing, renovating, disposing of, or conveying school property, facilities, equipment, technology, or furnishings.

Another example is found in Kentucky statutes (1976). Their state law provides school districts broad authority to use school district property for educational purposes. Kentucky revised state statutes establish the general powers and duties of school boards in Section 160.290:

Each board of education shall have general control and management of the public schools in its district and may establish schools and provide for courses and other services as it deems necessary for the promotion of education and the general health and welfare of pupils, consistent with the administrative regulations of the Kentucky Board of Education. Each board shall have control and management of all school funds and all public school property of its district and may use its funds and property to promote public education.

State statutes also provide school boards with the authority to dispose of school district property that is no longer needed for school purposes. Each state requires a unique procedure for doing so. As an example, Kentucky statutes set forth the following procedures for property disposal:

Kentucky § KRS 156.160

Necessity, Function, and Conformity: § KRS 156.031 requires that administrative regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary and resubmitted to the Legislative Research Commission prior to December 30, 1990; and KRS 156.160 requires the State Board for Elementary and Secondary Education to promulgate administrative regulations dealing with the disposal of real and personal property owned by local boards of education. This administrative regulation is necessary to provide for property disposal, leases and easements in accordance with an approved educational program.

Section 1. School property proposed for disposal shall be surplus to the need for the educational program of the district as determined by the effective facility plan. Request for approval shall be submitted in writing to the chief state school officer. Disposal may be implemented upon approval.

Section 2. Prior to the execution of the proposed lease agreement for, or easement upon, public school property shall be submitted to the local board of education for its consideration and written recommendation forwarded to the chief state school officer for his review, approval and assurance that disposal will not affect the integrity or usefulness of property crucial to the educational needs of the district. (SBE 22.070; 1 Ky.R. 1049; eff. 6-11-75; Am. 8 Ky.R. 329; eff. 12-2-81; 17 Ky.R. 2029; eff. 2-7-91.)

In contrast, North Carolina (n.d.) differs in how they grant such authority and the exact processes involved in such. North Carolina statutes allow school boards to dispose of school property by sale, exchange, or lease of property belonging to local boards of education (North Carolina General Stat. §115C-518).

2. How have federal and state courts interpreted school districts' express authority to acquire, use, and dispose of school district property?

Case law emerging from federal and state courts indicates that the courts consistently interpret relevant laws in a manner which suggests school districts have relatively broad discretionary authority as it relates to acquiring, using, and disposing of school district

properties. However, the courts stipulate that the nature of such authority is afforded by statutory law and is unique to individual states. For example, in *Spaulding v. Campbell County Board of Education* (1931), the court determined the county board of education had exercised its discretion when selecting a school site. Similarly in *Smith v. City Board of Education of Birmingham* (1961), the court concluded the district could condemn and take lands to construct a central office complex.

School boards have broad discretionary power to select properties they wish to purchase for school district use. The *Justice v. Clemons* (1948) and the *Neis v. Board of Education of Randolph County* (1985) cases represent rulings where this power is supported by case law. In addition, the cases analyzed in this study support the precept that school boards have discretionary authority to determine how to best use school property shows. This is particularly true when it comes to making allowances for incidental and occasional use of school facilities outside of the school day at times when it does not interfere with the primary function of educating students. Secondly, case law gives deference to state statutes, which typically provide boards with the authority to make decisions about the configuration and specific school usage of facilities in inventory. It is notable, however, that some state statutes require an affirmative vote of the electorate to support such decisions. Finally, the discretionary power of the board is restrained as it pertains to granting other agencies unfettered access to school premises. For example, in the cases reviewed, the authority of both the Department of Human Resources and the health inspector supersedes the authority of school boards to restrict access so that these agencies are able to carry out the functions prescribed to them by law.

School boards may, in some states, enter joint use agreements with other agencies to maximize the use of school district property. Such authority is either restricted or permitted in

state statutes. Based on the cases reviewed, the authority to enter into joint use agreements must follow a couple of legal principles. First, state statutes must provide the requisite authority to boards of education to enter into these types of agreements. Secondly, the joint use of a facility may not impede its intended use.

Case law indicates that states provide school districts with authority to consolidate or abandon use of school facilities as they find necessary. The courts have determined that the use of public money to finance schools does not give taxpayers authority in making a determination to cease use of a school. This authority was vested with the board of education in the cases examined. Moreover, case law supported the reversion of land that was conveyed to schools for school purposes, as defined by the grantor in the conveyance.

Case law distinguishes the times when school districts are authorized to sell items to students and others. Three of the four cases examined dealt specifically with the school district or its agents selling items to students for convenience with nominal profit to the district as a form of customer service. In the last case, a group of principals were operating a school store but were making personal profit as individuals and had an unfair business monopoly, as vendors did not have access to students during the school day. The courts concluded it was permissible to sell items at school as long as school personnel do not reap personal gain.

This case made it clear, that unless expressly delineated otherwise, the property, subject to reversion, returns to the larger or dominant parcel from whence it was conveyed. It makes no difference if ownership of the larger parcel has changed hands since the original conveyance. In addition, all improvements on the conveyed property also become the property of the owner of the reverted property unless the original conveyance expressly provides otherwise.

School districts may convey property to other government entities as provided for in the applicable state statutes. The conditions relating to such conveyances vary by state. Some states authorize conveyances to other governmental units for nominal consideration. Case law suggests that property transfers to other governmental or quasi-governmental agencies require the property continue to be used for the good of the public. Other states require such conveyances be made as sales-purchase agreements and stipulate that fair market value be received regardless of the type of organization.

Case law has resulted in favorable opinions to school districts unless there is evidence of an abuse of power or some arbitrary and capricious conduct. In *Yeshiva v. Board of Education* (1988) the Court's declared that the school board had acted arbitrarily and capriciously when they failed to accept the highest bid on an advertisement to lease a vacated school building.

3. What trends have emerged from case law relating to the acquisition, use, and disposition of school district property?

School districts usually win unless the board has violated state statutes or usurped its authority by acting arbitrarily or capriciously. One general trend is that there must be "adequate consideration" for the exchange of property unless state statutes specifically authorize differently.

One case where no "adequate consideration" was required for conveyance of property was *School Dist. No. 1, Multnomah Co. v. Multnomah County* (1940). In this case it was clear that Oregon law allows the transfer of property to another governmental agency as long as the property continues to be used for a public purpose.

The opposite was the case in *Harvey v. Board of Public Instruction for Sarasota County* (1931), the board intended to convey a portion of land at no cost for the building of a post office.

The court ruled that the board may not convey property for enhancement of value of other property. The board holds property in trust and must conduct business with this in mind. The Court ruled that the board has a duty to dispose of property only upon “adequate consideration.” So the board cannot give away property.

Another general trend that is evident in this study is that school districts are finding it necessary to use eminent domain to obtain school property. In *Clayton v. School Board of Volusia County* (1996), the court addressed another aspect of eminent domain. In this case a suit was filed because the School Board settled an eminent domain dispute prior to a fair market value being established by the hearing panel. The settlement was well in excess of the estimated value of the property and above a purchasing ceiling established in state law. The Court ruled the Board had abused its authority and the eminent domain settlement was void.

4. What legal implications should school district leaders consider when acquiring, using, or disposing of school district property?

Prior to acquiring new property, school districts should be cognizant of their authority to act and of the potential related legal implications. School district administrators should understand that their authority to acquire property, generally, is a product of the state statutes governing the school district. These statutes delineate the appropriate processes and procedures to make such acquisitions. Adhering to the aforementioned statutes is a requirement for a school district to be successful during legal challenges. In addition to having the general authority to acquire such properties, state statutes often provide specific procedures relating to site selection, purchases, and the financing of such. Additionally, state laws typically contain provisions for school districts to acquire school district property through the use of eminent domain. Some

states allow school districts to enter into lease purchase agreements. School district leaders should be aware of the statutory parameters within their respective state.

The number of cases analyzed in this study relate to litigation surrounding the appropriate use of school facilities by school personnel and outside groups during and after the school day. These cases, at times, address the principle of equal access and the Establishment Clause. School district leaders must understand the implications of providing open forum, limited open forum, and no public forum. Moreover, school district leaders should be aware of permissible and non-permissible activities on school grounds regardless of whether school is in session or not.

Prior to disposing of school district property, school administrators should be aware of provisions contained in the property's deed. In many cases, legal action is pursued to enjoin boards of education from disposing of property without first considering existing reversionary clauses. School district leaders should also be informed on what methods are permitted by state statutes and local laws to dispose of unwanted property. In some cases, these types of property can be conveyed without consideration to other government entities, or leased. In order to complete transfer of title appropriately, school district leaders should understand the implications of all permissible options.

As a result of reviewing the literature on this topic of study, reviewing the cases included in this study, and completing an analysis of each one, a number of principles and guidelines have been extrapolated which may be beneficial for school administrators as they navigate the labyrinth of managing the acquisition, use, and disposition of school district property. These items are provided in the pages that follow.

## Principles and Guidelines

1. School Boards have the authority to acquire property. An example of this is found in *Board of Education of Nashua v. Vagge* (1960) where the court established the authority to acquire property for school related purposes is vested in boards of education.

2. School Boards can acquire property through eminent domain. In *Smith v. City Board of Education of Birmingham* (1961), the court concluded the district could condemn and take lands to construct a central office complex.

3. School Boards can acquire property through lease purchase agreements in states where it is permitted. In *Foree v. School District No 7*. (1993), it was decided school districts are legally able to enter into lease agreements for purposes of acquiring school district property.

4. School Boards can sell bonds to finance debt relating to the acquisition of school district property. The Court established that school boards have the necessary authority to sell bonds in order to finance property purchases (*Johnson v. City of Sheffield*, 1938).

5. School Boards can make decisions relating to the construction of facilities.

6. School Boards can cause the levy of fees and taxes for school purposes.

7. School Boards can select sites and properties to purchase for school purposes. In *Spaulding v. Campbell County Board of Education* (1931), the Court determined the County Board of Education had exercised its discretion when selecting a school site and their selection should not be interfered with, unless it appears the Board acted arbitrarily or capriciously.

8. School districts may not authorize the use of school district property for money-making purposes that benefit any individual or party other than the school itself. *Herald et al. v. Board of Education et al.* (1909) involved the misuse of conveyed property. The conveyance granted the property to the school district to be used as a free school. The board agreed to lease a

portion of the property for the purpose of producing oil and gas. The court determined that school districts have the power to make contracts related to school matters, but a contract of this type is outside of the authority of the board. A board cannot lease property for money making purposes. The board could sell the property as long as the proceeds are put to educational use.

9. School districts may provide a limited open forum on school property, but doing so opens the possibility to equal access claims by other non-curricular related groups. *Ceniceros v. Board of Trustees of the San Diego U.S.D.* (1997) resulted in a favorable ruling for the plaintiff. In this case, the student requested permission for a religious club to meet during lunch. The school denied the request. The student filed suit claiming a violation of the Equal Access Act. The court held that the school was in violation of the Equal Access Act. By allowing other non-curricular groups to meet, the school had created a limited open forum and therefore could not deny this request. The Equal Access Act holds that it is unlawful for any public secondary school that receives Federal financial assistance and has limited open forum to deny “equal access.”

10. School districts may consolidate schools when necessary to effectively and efficiently operate the school system. In *State v. Johnson* (1953), a trustee decided to consolidate two schools due to declining population. The trustee closed one school and sent the students to the other school. A citizen brought action to compel the reopening of the abandoned school. The court reasoned that the trustee acted within his powers and the decision was not an abuse of discretion. The court ruled in favor of the school (trustee).

11. School districts can protect their property from nuisances impacting the operation of the school district. *Caddo Parish School Board v. Pyle* (1947) resulted when the school board filed an action to enjoin Pyle from operating a mill near school property. The school board claimed the mill interfered with the operation of school. Pyle alleged that the school board lacked

capacity to file suit. The court held that the school board had capacity to prosecute the suit according to state statute. For fourteen years the school had made use of the property in question. The court determined that the school had acquired title through adverse possession. Court ruled in favor of the board.

12. School districts may sell items to students during the school day providing the proceeds benefit the school. *Cook v. Chamberlain* (1929) resulted when a taxpayer brought suit against a principal to restrain the school from selling items to students in a supply station located in the school. Only essential items were sold in the school supply station and they were sold at cost. The court ruled for the school principal since there was no evidence of personal gain. In a similar case, *Hempel v. School District No. 329 of Snohomish County* (1936), the Student Association was selling lunches and candy to students for a small profit. The profit was returned and expended on the student body by the Student Association. The court held that the school district had the authority to permit the sale of said lunches and candy to students.

### Conclusions

This study aimed to understand the statutory and case law implications relating to the acquisition, use, and disposition of school property. The study identified three sections to be analyzed and found that, within each section, cases clustered around common themes. While each of the clusters addressed unique themes within the broader section, the courts generally found in favor of school districts. Exceptions to this conclusion typically relate to incidents where school districts failed to adhere to statutory law, case law precedents, or best practices. Moreover, this study concludes school districts are granted broad discretionary authority to acquire, use, and dispose of school property in a manner consistent with applicable existing law.

Furthermore, courts have avoided interjecting their opinion on the wisdom of a board's decision, but instead have interpreted the existing law fairly strictly. Absent of a breach of law, to include arbitrary and capricious conduct, courts have found in favor of school districts. In conclusion, school districts are able to select suitable properties for school district use. They are able to acquire said properties by way of purchase, lease, and the application of eminent domain. School districts can utilize school district property in a manner consistent with applicable laws to include non-traditional activities outside of the regular school day and involving external organizations. Likewise, when school districts determine that property is no longer needed or acceptable for use, they have the authority to properly dispose of these resources. School districts are able to sell, convey with or without consideration (depending on state statutes), and lease property to other entities.

#### Closing Remarks

The role of school administrators is complex. School administrators are charged with meeting accountability standards established by federal and state governments. In addition, school administrators must operate within the confines of established policies and procedures of boards of education. Satisfying each of these entities is a daunting task. One of the many challenging aspects of school administration relates to the volume of issues one must deal with.

Managing the acquisition, use, and disposition of school district property is just one of the many functions that school administrators must juggle. The purpose of this study was to provide information and research for school administrators so that their decisions can be more informed. This study merges case law and the body of research related to acquisition, use, and disposition of school district property.

As cited in previous chapters, the need for school districts to acquire new properties and facilities continues to grow. Consequently, school districts often find themselves struggling to navigate the labyrinth of issues related to property acquisitions. Case law substantiates that school boards have broad authority when it comes to acquiring property for school purposes. Litigation often results from the misunderstanding of such authority or claims of the abuse of such. School administrators should be cognizant of the laws and regulations that govern such authority in their respective state and local school district. So long as school administrators follow these established rules and regulations, their authority is unfettered.

Another aspect of managing school district property relates to the appropriate uses of them. This study determined that school districts are able to use school district property for more than teaching and learning during the normal school hours. School districts can provide access and use of school facilities for external organizations within the limitations established by respective state and local regulations.

From time to time, school buildings and the properties on which they sit no longer serve the purpose for which they were intended. When this occurs, school districts must understand how to properly dispose of this unwanted property. Individual states and conveyance agreements often clearly define the procedures, protocol, and process for disposition of such.

#### Recommendations for Further Study

1. Researchers should continue to monitor new developments in statutory law and case law as it relates to acquisition of school property.

2. Researchers should expand the scope of the body of research available beyond the focus of this study to include intellectual property and equipment within school facilities.

3. Researchers should explore the emergence of joint use agreements between schools and other entities.

4. This study did not include personal injury resulting from the use of school district property. This should be examined further.

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