

2949

THE SUPERVISOR OF SCHOOLS MAY REFUSE THE SALE OF SCHOOL LANDS WHICH HAS BEEN APPROVED BY THE BOARD OF TOWNSHIP TRUSTEES BECAUSE HE FEELS THE PRICE INSUFFICIENT. §§501.01, R.C., 501.45, R.C., 501.49, R.C., 3315.18, R.C., 3315.19, R.C.

**SYLLABUS:**

Where under Section 501.45, Revised Code, a lessee of school land applies to the board of township trustees to surrender his lease and acquire the fee simple title to such land, and the board approves the application and transmits it to the supervisor of school and ministerial lands, the supervisor may refuse to approve the transaction on the grounds that the price to be paid is insufficient and is not, therefore, in the best interest of the trust; and this is true even if the price to be paid is not less than the appraised value of such land.

Columbus, Ohio, April 19, 1962

Hon. James A. Rhodes, Auditor of State  
State House, Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"The lessee of certain school lands in Bath Township, Greene County, holding under a 99 year lease, renewable forever, which has been reappraised every 33 years as provided by law, has requested, pursuant to the provisions of Section 501.45 of the Revised Code, that he desires to surrender his lease and acquire the fee simple title to the lands which he now holds under his lease.

"The Township Trustees, pursuant to this law, will advertise the fee for sale to said lessee at the appraised value which is \$1,634.79 for 21.61 acres.

"The Board of Township Trustees will hold a hearing on this matter and have intimated they will accept application for sale of the fee as it is not contemplated that there will be any objections to the surrender of the lease.

"An opinion is requested as to whether or not the State Supervisor of School and Ministerial Lands, notwithstanding the acceptance by the Board of Trustees, may reject the proposal to purchase. The statute indicates that if any objections made are not substantial and sufficient and that the action of the Board is for the best interest of the trust, the State Supervisor shall notify the lessee of the approval. There is nothing in this section as I read it and that is the reason for asking for your opinion as to whether or not the State Supervisor may reject the purchase price offered as being too low."

Pertaining to the state supervisor of school and ministerial lands, Section 501.01, Revised Code, reads as follows:

"By virtue of his office, the auditor of state shall be the state supervisor of school and ministerial lands, and shall have general charge of and supervision over the lands appropriated by congress for the support of schools and purposes of religion. He shall maintain a journal in which he shall enter his proceedings."

As to a lessee of school lands surrendering his lease to acquire fee simple title to the lands, Section 501.45, Revised Code, provides:

“Any lessee desiring to surrender his lease and acquire the fee simple title to school or ministerial lands, shall file his application with the board of township trustees of the township having the local control and management of such lands, setting forth a description of the lands for which he desires the fee simple title, the quantity thereof, the date of his lease or of the assignment of lease under which he claims title, the price per acre, and the total price which he desires to pay for such title, which in no event shall be less than the appraised value of such land. Thereupon the board shall advertise, by posting notice in at least five public places within the township that such application has been filed with it. Such notice shall set forth a true copy of the application, and the time and place at which the board will act thereon. At the time and place so fixed, the board shall hear all objections against such surrender, which objections may be oral, in writing, or both, and shall, after such hearing, determine whether it will be for the best interest of the beneficiary of the trust to accept such proposal. If the board declines to accept, its action upon such application shall be final, but in such case the application may be made again after the expiration of six months. If the board accepts such proposal, it shall forthwith transmit such application and a certificate of its action thereon, together with all written objections and a statement of all oral objections, to the state supervisor of school and ministerial lands.

“If the supervisor finds that such objections are not substantial and sufficient, and that the action of the board is for the best interest of the trust, he shall then notify the board of such finding, and the board shall at once notify the lessee of such approval of its action.”

It is possible that the surrender of a lease to particular school lands and acquisition of fee simple title thereto is governed by law other than Section 501.45, *supra*. In this regard, Section 501.49, Revised Code, reads:

“Whenever, by the terms of any general law of this state, surrenders of leases and the acquisition of a fee simple title to school and ministerial land from the state was provided for upon terms affecting substantial property rights, and differing from sections 501.44 to 501.48, inclusive, of the Revised Code, such surrender of leases and sale of lands shall be had pursuant to such law. Such lessee may, in a writing filed with the state supervisor of school and ministerial lands, waive his rights and privileges under such law, and proceed under sections 501.44 to 501.48, inclusive, of the Revised Code, to make such surrender and obtain such fee simple title.”

For the purposes of this opinion, I will, however, assume that the lands in question come within the purview of Section 501.45, *supra*, or, if not,

that the lessee has pursuant to Section 501.49, *supra*, elected to proceed under Sections 501.44 to 501.48, inclusive, Revised Code, to make the surrender and obtain the fee simple title.

Under Section 501.45, *supra*, where the board of township trustees accepts the proposal, it transmits the application with the board's certificate of approval to the state supervisor of school and ministerial lands. The board then does not notify the lessee of the approval unless the supervisor finds that any objections made are not substantial and sufficient, and that the board's approval is for the best interest of the trust.

There can be no doubt that under the language of said Section 501.45 the supervisor's approval is an essential step to the proceeding. Without such approval, the lessee is not notified and procedure stops. And here it will be noted that under Section 501.45, Revised Code, surrenders of leases and conveyance of title are made subject to the approval of the supervisor, that section reading in pertinent part :

"Surrenders of leases and conveyance of title to school or ministerial lands as provided by sections 501.45 to 501.47, inclusive, of the Revised Code may be made upon terms of cash, to be paid within twenty days *after notice of the approval by the state supervisor of school and ministerial lands* of the action of the board of township trustees, or one third in cash at such time, and the remaining two thirds in two equal installments, payable with six per cent interest per annum payable annually, in one and two years after the date of such first payment. \* \* \*"  
(Emphasis added)

Further, under the language used in Section 501.45, the supervisor appears to have considerable discretion as to whether he will approve a particular transaction. He may find objections well taken, or he may find that the transaction is not for the best interest of the trust.

Regarding the trust, Section 3315.18 and 3315.19, Revised Code, are pertinent. They read as follows :

Section 3315.18:

"The money which has been and may be paid into the state treasury on account of sales of lands granted by congress for the support of public schools in any original surveyed township or other district of country, and on account of the sales of minerals thereon, shall constitute the 'common school fund' of which the auditor of state shall be superintendent, and the income of which must be applied exclusively to the support of public schools."

## Section 3315.19:

“The auditor of state shall keep an account of the capital sum belonging to the ‘common school fund,’ and the ‘ministerial trust fund.’ Interest thereon shall be computed by him annually for the calendar year. The auditor of state shall keep an account with and for each township or district of country in the state, showing the capital sum in such common school fund and ministerial trust fund belonging to each such township or district of country, the interest accruing on the same and the disbursement of such interest.”

The total price to be paid under Section 501.45, *supra*, for any certain land may not be less than the appraised value. This does not mean, however, that a price equal to the appraised value will be necessarily sufficient. As superintendent of the fund, the auditor of state, who is also the supervisor of school and ministerial lands, has a duty to protect the fund. If the price offered on particular lands is too low to allow the fund to realize in interest at least as much as was realized under the lease, the supervisor would understandably question the transaction, even if such price is equal to the appraised value. Also, other elements might be present in a particular case which might cause the supervisor to question the price. In such instances I would consider that under Section 501.45, *supra*, the supervisor has the discretion to approve or not approve the transaction.

In conclusion, it is my opinion and you are advised that where under Section 501.45, Revised Code, a lessee of school land applies to the board of township trustees to surrender his lease and acquire the fee simple title to such land, and the board approves the application and transmits it to the supervisor of school and ministerial lands, the supervisor may refuse to approve the transaction on the grounds that the price to be paid is insufficient and is not, therefore, in the best interest of the trust; and this is true even if the price to be paid is not less than the appraised value of such land.

Respectfully,

MARK MCELROY

Attorney General