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1. REAL ESTATE—BOARD OF EDUCATION MAY SELL AT PRIVATE SALE—TO TOWNSHIP TRUSTEES—TWO INSTANCES—SALE OF REAL PROPERTY AFTER TWICE OFFERED AT PUBLIC AUCTION—NOT SOLD—SALE WHERE PROPERTY DOES NOT EXCEED SIX HUNDRED DOLLARS IN VALUE—SECTION 4834-13 G. C.
2. POWER OF PRIVATE SALE GRANTED TO BOARD OF EDUCATION—TO SELL REAL PROPERTY TO ANY MUNICIPALITY OR BOARD OF TRUSTEES OF SCHOOL DISTRICT LIBRARY—AUTHORITY CAN NOT BE EXTENDED BY IMPLICATION OR OTHERWISE TO INCLUDE ANY OTHER POLITICAL SUBDIVISION OF STATE.

SYLLABUS:

1. A board of education, under authority granted to it by Section 4834-13, General Code, may sell its real estate at private sale to township trustees in only two instances. These instances are: the sale of such real property after it has been offered twice at public auction and is not sold; and the sale of such real property which does not exceed in value, six hundred dollars.

2. Section 4834-13, General Code, grants the power of private sale to a board of education when the board wishes to sell its real property to any municipality or board of trustees of the school district library. This authority so granted cannot be extended by implication or otherwise, to include any other political subdivision of the state.

Columbus, Ohio, July 30, 1951

Hon. Clyde E. Lewis, Prosecuting Attorney
Delaware County, Delaware, Ohio

Dear Sir:

This will acknowledge receipt of your request for my opinion, which reads in part as follows:

“May a board of education convey to township trustees, real estate, no longer needed for school purposes, upon such terms and conditions as may be agreed upon by the board of education and the township trustees?”

The statute which governs the sale of real or personal property by a board of education, is Section 4834-13, General Code, as passed by the

99th General Assembly, Amended Senate Bill No. 46, on April 9, 1951, and approved on April 18, 1951, which reads as follows:

“When a board of education decides to dispose of real or personal property, held by it in its corporate capacity, exceeding in value six hundred dollars, it shall sell such property at public auction after giving at least thirty days’ notice thereof by publication in a newspaper of general circulation or by posting notices thereof in five of the most public places in the district in which such property is situated. When the board has twice so offered a tract of real estate for sale at public auction and it is not sold, the board may sell it at a private sale, either as an entire tract or in parcels, as the board deems best. Provided, however that in case the board of education decides to dispose of such real property, it may sell and convey the same to any municipality or board of trustees of the school district library in which such real estate is situated, upon such terms and conditions as may be agreed upon. Provided further, that where a board of education decides to trade as a part, or entire consideration, a motor vehicle on the purchase price of another motor vehicle, it may trade the same upon such terms and conditions as may be agreed upon by the parties thereto. The president and the clerk of the board shall execute and deliver deeds or other necessary instruments of conveyance to complete the sale or transfer provided for by this section.”

The only difference between the present Section 4834-13, General Code, and the old section with regard to the sale of real estate is a change from three hundred dollars to six hundred dollars, as being the price range for private sale.

It will be noted from reading the above quoted statute that there are only four situations in which a board of education may sell its real property at private sale. Those situations are: the sale of such real property after it has been offered twice at a public auction, and is not sold; sale of such real property which does not exceed in value six hundred dollars; sale of such real property to a municipality; and sale of such real property to a board of trustees of a school district library. The remainder of this opinion shall contain an interpretation of these four instances of private sale as applied to your question.

If the conditions are met in either of the first two above named situations, the Board of Education of Radnor Local School District may sell its real estate to the Township Trustees of Marlborough Township, upon such terms and conditions as may be agreed upon by them.

For the said board of education to sell its real estate to the Township Trustees of Marlborough Township, under the authority of the last two situations for private sale stated in the above statute, the language of the legislature must be interpreted to include any and all political subdivisions of the state. This inference cannot be made. It is a well known fact that statutes of this nature are strictly construed. See for example, *Schwing v. McClure*, 120 Ohio St., 335, which applies this rule to the contractual powers of a board of education. In the light of the above, therefore, the said board of education cannot convey its real property at private sale to said township trustees under the authority the statute gives to sell real property to municipalities and to boards of trustees of school district libraries.

One of my predecessors considered a similar question in Opinion No. 2474, Opinions of the Attorney General for 1934, Vol. I, page 422. The statute there under consideration was Section 4756, General Code, which was similar to present Section 4834-13, General Code. The question presented to my predecessor in that opinion was whether a board of education could sell its real estate to the United States Government at private sale, for the sum of \$7,500.00. The second branch of the syllabus reads:

“A board of education is without power to sell real estate or personal property held by it in its corporate capacity exceeding in value \$300.00, at private sale, until after an attempt has been made to sell the same at public auction in the manner provided by Section 4756, General Code, and a failure to sell the property in that manner, unless such property is sold to a municipality or to the board of trustees of the school district library in which such real estate is situated.”

It is further said on page 424, of the opinion:

“Section 4756, supra, grants to boards of education the power to dispose of real estate held by them in their corporate capacity and expressly provides how such sales shall be made. Except as such power is reposed in a board of education by virtue of the said statute, a board of education possesses no power whatever to sell or dispose of the property held by it in its corporate capacity, and it clearly follows that a board of education in exercising this power, is limited by the terms of the statute. * * *

“Inasmuch as the board of education in question has not complied with the terms of Section 4756, General Code, with respect to a sale at public auction and publication or posting of notices thereof, it follows, in my opinion, that this board is with-

out power to sell the property in question at private sale and convey title thereto. The fact that the Federal Government is involved in the matter makes no difference. The attempted sale in the manner stated is nothing more or less than a private sale, which the board of education is not empowered to make until after an attempt is made in compliance with the statute, to sell the property at public auction."

I am in full accord with the principles set forth in that opinion and feel that those principles are equally applicable to the question presented by your request.

For the reasons stated herein, it is my opinion, and you are accordingly advised that:

1. A board of education, under authority granted to it by Section 4834-13, General Code, may sell its real estate at private sale, to township trustees in only two instances. These instances are: the sale of such real property after it has been offered twice at public auction, and is not sold; and the sale of such real property which does not exceed in value six hundred dollars.

2. Section 4834-13, General Code, grants the power of private sale to a board of education, when the board wishes to sell its real property to any municipality or board of trustees of the school district library. This authority so granted cannot be extended by implication or otherwise, to include any other political subdivision of the state.

Respectfully,

C. WILLIAM O'NEILL
Attorney General