OPINION NO. 2003-032

Syllabus:

1. The real property conveyed to the Morgan County Treasurer by James A. McConnell, executor of the estate of Robert McConnell, by deed dated August 7, 1851, and recorded March 9, 1852, appears to be held in trust for the use and benefit of McConnelsville schools and may be used and managed by the board of education with responsibility for schools in McConnelsville.

2. Any proposal to transfer from the county treasurer to the board of education the ownership of real property that is held in trust by the county treasurer should be approved by an appropriate court with equitable powers.

3. The authority of a board of education to use and manage property held in trust for its use and benefit includes the authority to construct, maintain, demolish, and replace school buildings.

4. Should there be a court action for the proposed transfer of real property held in trust for school purposes by the county treasurer, the Attorney General must be notified and may participate in accordance with the provisions of R.C. 109.25.

To: Richard D. Welch, Morgan County Prosecuting Attorney, McConnelsville, Ohio
By: Jim Petro, Attorney General, November 3, 2003

1. What is the legal nature of the conveyance from James A. McConnell to the Morgan County Treasurer as described in Exhibit "A" attached to this letter?

2. Can the current Morgan County Treasurer convey the real property in question to the local Board of Education, and if so, by what legal instrument or procedure? Does any such transfer violate the purpose for which the conveyance was made in the first instance?

3. What are the rights, duties and responsibilities of the Morgan County Treasurer with respect to this real property in question?

4. If you opine that the County Treasurer cannot convey the real property to the Board of Education, what are the duties, rights, responsibilities and liabilities for the County Treasurer and the Board of Education with respect to removing, razing, or demolishing the old school building, a portion of which is located on the questioned property?

5. What role must your agency play, if any, in this situation?

6. Do the heirs of Robert McConnell have any legal rights in this situation with respect to the questioned real property if the County Treasurer can and wishes to convey the real property to the Board of Education?

Historical Background

The real property in question was conveyed to the Treasurer of Morgan County and his successors in office by a deed dated August 7, 1851, and recorded March 9, 1852. The deed reflects that, in 1817 when Morgan County was being organized by commissioners appointed by the General Assembly, Robert McConnell, the founder of McConnelsville, "became bound" to "convey among other valuable donations by him to be given for public and beneficial purposes," certain real property "in Trust for the use of schools, ... in case the aforesaid commissioners should locate and establish the seat of Justice for said Morgan County at said Town of McConnelsville." The commissioners did select McConnelsville as the county seat, but the land was not conveyed during Robert McConnell's lifetime. Following his death, his son, James A. McConnell, acting as executor of the estate, conveyed the property in the following words:

> I, James A. McConnell, ... in pursuance of the powers and by virtue of the authority vested in me by said last will and Testament, in consideration of the premises and the valuable considerations aforesaid, and in consideration of the sum of one dollar to me in hand paid the receipt whereof I hereby acknowledge, have given, granted, aliened, and conveyed, and by these presents do freely, fully, and absolutely give, grant, alien and convey unto Sebastian E. Fouts the now treasurer of said Morgan County, and to his successors in office, in Trust forever for the use, benefit and behoof of schools in said Town of McConnelsville, and for no other purpose whatsoever [certain real property]. To have and to hold the aforegranted premises with all the appurtenances and privileges belonging to the same to the said Treasurer aforesaid and to his successors in Office forever for the sole and only use, benefit, and behoof of the schools of said Town forever as a good and indefeasible Estate in fee simple.

The land so conveyed to the county treasurer has been used for school purposes for many years. It appears that a school building was first erected around 1833, before the property was conveyed to the county treasurer. Other building programs were completed in subsequent years. It is not clear when the first board of education was organized, but there are board of education resolutions dating back to 1867 that relate to building programs on property conveyed by the McConnell Estate.

It is not clear precisely why the real estate in question was conveyed to the county treasurer. It appears that, in 1817, Robert McConnell thought that the county treasurer would be the appropriate recipient of the property, possibly because the county was then being organized and the county treasurer was responsible for holding the funds of the county and various local bodies within the county. It appears that James A. McConnell conveyed the property to the county treasurer in 1851 to carry out his father's wishes. It may be that no effort was made at that time to determine whether another entity then had authority to hold real property for purposes of McConnelsville schools. Our research has not disclosed with certainty which entity had legal authority to operate and manage schools in

McConnelsville in 1817 or 1851. *See* 23 Ohio Laws 36, 37-38 (1825) (directing county commissioners to levy real property tax for use of schools and giving township trustees authority to form school districts). *See generally Finch v. Bd. of Educ.*, 30 Ohio St. 37, 42-45 (1876) (certain cities and villages were constituted separate school districts by special acts of the General Assembly, such as an act of 1847 creating the board of education of Akron and an act of 1849 creating the board of education of Toledo; legislation provided that all legal titles to lands and other property used for common school purposes in those cities and villages vested in the city council or town council); *Bd. of Educ. v. Unknown Heirs of Aughinbaugh*, 99 Ohio App. 463, 466, 468, 134 N.E.2d 872 (Auglaize County 1955) (in 1833, when land was dedicated to school use in Wapakoneta by means of a plat under 22 Ohio Laws 301 (1805), the land was deemed conveyed to the county in which the town lay "in trust for the uses of the public or other intended purpose, and no other," because there was then no incorporated city to receive it; the land was transferred to the city upon its incorporation in 1849).

Current Problem

Questions regarding the ownership and use of school property arose recently when the local board of education received funds to build new schools throughout Morgan County and, as part of the building program, was presented with the opportunity to obtain funds to demolish or raze the old school buildings that were being replaced. *See* R.C. Chapter 3318. A small part of one of the buildings to be demolished—the old M & M High School building, known more recently as the McConnelsville Elementary School building—lies on a portion of the land conveyed from the McConnell Estate. A title search of the property disclosed only the deed from the 1850's, conveying the land to the Morgan County Treasurer and his successors in office, "in Trust forever for the use, benefit and behoof of schools in said Town of McConnelsville, and for no other purpose whatsoever."

As your letter states:

> This came as a surprise to the Board of Education and the current County Treasurer, neither of whom had any knowledge of the McConnell grant. Actually, the Board of Education had been proceeding through the years as if it owned the real property on which it built the school buildings.

You have informed us that the board of education has asked the county treasurer to convey the real property in question to the board of education by quitclaim deed, and the treasurer has asked you about her legal rights, responsibilities, and duties regarding this property.[1]

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[1]It may be that the board of education assumed that title to this property passed to the board of education by operation of law. Several statutes provided for property owned by various public entities to pass to boards of education for school purposes. *See* 70 Ohio Laws 195, 205, Sec. 39 (1873) (reorganizing school districts and providing: "All property real or personal, which has heretofore vested in and is now held by any board of education, or town or city council, for the use of public or common schools in any district, is hereby vested in the board of education provided for in this act, having under this act jurisdiction and control of the schools in such district"); *McMechan v. Bd. of Educ.*, 157 Ohio St. 241, 246, 105 N.E.2d 270 (1952) (quoting Act to Provide for the Reorganization, Supervision and Maintenance of Common Schools, passed March 14, 1853, as creating township boards of education and investing them "with the title, care and custody of all schoolhouses, schoolhouse sites, school libraries, apparatus or other property belonging to the school districts as now

We note, initially, that we are not able, by means of a formal opinion of the Attorney General, to resolve all the issues you have raised. You have asked questions about the legal

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organized, or which may hereafter be organized, within the limits of their jurisdiction"); *Bd. of Educ. of Village of Van Wert v. Inhabitants of Van Wert*, 18 Ohio St. 221, 225 (1868) (quoting Act of March 13, 1850, Sec. 3 (S. & C. 1377): "[t]he title to all real estate and other property, belonging, for school purposes, to any city, town, village, township, or district, or to any part of the same, which is or may be organized into a single-school district ... shall be regarded in law as vested in the board of education thereof, for the support and use of the public schools therein;" but stating that statutory transfer of property applies only in cases of absolute ownership and does not change a dedication for a specific use), *overruled in part by Babin v. City of Ashland*, 160 Ohio St. 328, 116 N.E.2d 580 (1953). Our research has not disclosed a statute transferring to a board of education land held in trust by a county treasurer.

Babin v. City of Ashland, 160 Ohio St. 328, 116 N.E.2d 580 (1953), describes the manner in which legal title to public lands included on city plats passed by operation of law. Until 1852, all municipal corporations in Ohio were organized under special acts of incorporation. *Babin v. City of Ashland*, 160 Ohio St. at 333. Under an act passed in 1805, when a town was laid out, the proprietors were required to cause a map or plat to be recorded before any lots were offered for sale. The maps or plats were required to set forth and describe the public ground intended for streets, commons, or other public uses. The recording of the map was deemed a sufficient conveyance to vest the fee of the parcels intended for public uses "in the county in which such town lies, in trust to and for the uses and purposes therein named, expressed or intended, and for no other use or purpose whatever." *Id.* at 331 (quoting 22 Ohio Laws 301, Sec. 2). At that time, a town was not a legal entity in which the title to public ground could be vested, so the county held the title for the use of the town. *Id.* at 333. By an act passed in 1831, the General Assembly provided that the recording of a map or plat that denoted public land served to vest the fee "in such city or town corporate, to be held in the corporate name thereof, in trust to, and for the uses and purposes so set forth and expressed or intended." *Id.* at 332 (quoting 29 Ohio Laws 350, Sec. 6). Under that statute, "the legal title to public ground, theretofore vested in the county for the use of a town, was, on the incorporation of such town, transferred to the incorporated town." *Id.* (syllabus, paragraph 5); *see also City of Zanesville v. Zanesville Canal & Mfg. Co.*, 159 Ohio St 203, 207, 111 N.E.2d 922 (1953) (the General Assembly passed the 1931 act "apparently realizing the incongruity of having the title in the county, to real property situated in a municipality and used for a public purpose"). Thus, the recording of a plat is a means by which title to particular property may have passed to a county or to a city or town, and then possibly to a board of education.

The facts you have presented do not neatly fit the pattern of any case we have discovered. *See generally City of Zanesville v. Zanesville Canal & Mfg. Co.*, 159 Ohio St. at 208 (title to land dedicated in a town plat recorded prior to 1831 might still be in the county, though the city has been using the land); *Town of Lebanon v. Comm'rs of Warren County*, 9 Ohio 80 (1839) (when land was designated as public ground on a town plat recorded in 1803, the fee vested in the county, to hold for the uses of the town; a subsequent conveyance to the county commissioners by deed of the proprietors did not affect the trust or the title). We are unable to use the opinions process to make findings of fact or to examine in detail the history of the land in question. With the information available to us, we are unable to trace the property in question to determine to what extent the laws discussed above, or any or similar laws, may have affected its ownership.

nature of a conveyance and about the legal rights of heirs. Questions of this sort can be determined definitively only by the courts. *See* 1953 Op. Att'y Gen. No. 2393, p. 82, at 90 (considering questions concerning the conveyance of property held in a charitable trust for the benefit of a county children's home and stating: "I do not consider that it lies within my province to decide these questions. They are peculiarly within the proper jurisdiction of a court of equity, and ... your county authorities should make application to the court for instructions, and act in pursuance of the same"). We are able, however, to discuss general principles of law that are applicable to this situation and to provide you with guidance regarding appropriate steps to take.

Conveyance of Real Property from the McConnell Estate to the Morgan County Treasurer in Trust

The deed in question purports to convey real property in fee simple to the Morgan County Treasurer and his successors in office, in trust forever for the use, benefit, and behoof of the schools of the Town of McConnelsville.[2] For purposes of this opinion we have no reason to question the validity of the conveyance or the accuracy of its terms.

The conveyance appears to create a charitable trust, restricting the use of the property to school purposes, because the conveyance says that it creates a trust and specifies the purpose for which the trust property may be used.[3] *See* 1960 Op. Att'y Gen. No. 1169, p. 123 (syllabus, paragraph 1) (a deed conveying real property for a valuable consideration to the county commissioners and their successors in office forever, in trust for the use and benefit of a children's orphan home, creates a charitable trust, so that the property may not be sold without prior court approval). The statement of the deed in question that the conveyance is "in Trust forever for the use, benefit and behoof of schools in said town of McConnelsville, and for no other purpose whatsoever" appears to be sufficient to show the trust and the beneficiaries, and thus to put a person dealing with the land so conveyed on notice that a trust exists. *Cf.* R.C. 5301.03 (the use of the word "trustees," "as trustee," or "agent," or similar words, in a deed of conveyance do not give notice that a trust or agency exists, that there are other beneficiaries, or that there are limitations upon the power of the grantee to convey the land, unless there is other language showing a trust or expressly limiting the

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[2]McConnelsville is currently a village. *See* R.C. 703.01. Information available from the Ohio Secretary of State indicates that it was incorporated in 1817. We understand that the territory of McConnelsville is included in the Morgan Local School District, governed by the Morgan Local Board of Education.

[3]Under Ohio law, a charitable trust is defined as follows:

> any fiduciary relationship with respect to property arising under the law of this state or of another jurisdiction as a result of a manifestation of intention to create it, and subjecting the person by whom the property is held to fiduciary duties to deal with the property within this state for any charitable, religious or educational purpose.

R.C. 109.23(A). This is the generally accepted definition for an express trust. *Brown v. Concerned Citizens for Sickle Cell Anemia, Inc.*, 56 Ohio St. 2d 85, 90, 382 N.E.2d 1155 (1978); *cf. Kerlin Bros. Co. v. City of Toledo*, 8 Ohio N.P. 62, 72 (C.P. Lucas County 1900) (public officers may be designated as trustees, directors, or agents without being in a legal sense trustees of an express trust).

grantee's powers, or for whose benefit the conveyance is made, or another recorded instrument showing the trust and its terms).

"Trusts created by gift in the interest or promotion of education are recognized everywhere as trusts for charity.... They are highly favored by the law and should receive such construction as will tend to preserve rather than destroy them." *Rockwell v. Blaney*, 9 Ohio N.P. (n.s.) 495, 498 (C.P. Union County 1910). It has been found that a bequest to a board of education for school purposes is a trust for charity. *Id.* It appears similarly, that a conveyance to a county treasurer for school purposes is a charitable trust. *See, e.g.*, 1953 Op. Att'y Gen. No. 2393, p. 82 (syllabus, paragraph 1) ("[a] will giving property, real or personal to the board of trustees of a county children's home, and prescribing that it is 'to be used for the benefit of said county children's home, at the direction of the said board of trustees,' creates a trust in the nature of a charitable trust for the purpose indicated"). *See generally* 1928 Op. Att'y Gen. No. 2611, vol. III, p. 2143, at 2147 (observing that courts recognize the right of public corporations to accept trusts and administer them in accordance with the intention of the donor and citing *Perin v. Carey*, 65 U.S. 465, 24 How. 465 (1861), which upheld the validity of devises and bequests to the City of Cincinnati in trust for the establishment of colleges).

Our research has disclosed no authorities concerning a county treasurer holding real property in trust for school purposes.[4] Nonetheless, it appears that the conveyance to the county treasurer of real property in trust for school purposes created a trust.[5] *Trs. of*

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[4]In general, property donated to a county is held by the board of county commissioners, and property given for the benefit of public schools is held by the appropriate board of education. *See* R.C. 9.20 (authorizing, *inter alia*, a county or the commissioners of a county to receive by gift, devise, or bequest moneys, lands, or other properties for their benefit or the benefit of those under their charge, and to hold and apply the moneys, lands, or properties according to the terms of the gift, devise, or bequest); R.C. 3313.17 (authorizing the board of education of a school district to take and hold in trust for the use and benefit of the school district "any grant or devise of land and any donation or bequest of money or other personal property"); R.C. 3313.36 (authorizing a board of education to accept any bequest made to it by will or any gift or endowment, upon the stated conditions); *Carder v. Bd. of Comm'rs*, 16 Ohio St. 353, 369 (1865) ("[t]he board of county commissioners is the body ... in whom is vested by law the title of all the property of the county.... A devise to the county is a devise to the commissioners of the county, and vests the title in them, for the uses of the county"); 1937 Op. Att'y Gen. No. 201, vol. I, p. 324 (authority of board of education to accept and administer trust). It has been held that a board of county commissioners is competent to take and hold property devised or bequeathed to it for educational purposes, and to authorize its expenditure by boards of education within the county. *Christy v. Comm'rs of Ashtabula County*, 41 Ohio St. 711 (1885). Statutory provisions authorize a board of county commissioners to receive bequests, donations, and gifts of real and personal property and money to promote and advance the cause of education in the county, and permit its payment to incorporated institutions of learning in the county or for expenses of the teachers institute. R.C. 307.22.

[5]It is difficult to determine with certainty all the statutory powers a county treasurer had in 1817 or in 1851. No comprehensive statute authorizing the acceptance of gifts, devises, and bequests by various public bodies and officials was in existence until R.S. 20 (the predecessor of G.C. 18 and R.C. 9.20) was adopted in 1880. No version of this provision specifically authorizes county treasurers to receive gifts, devises, or bequests for public purposes. *See* 1989 Op. Att'y Gen. No. 89-032, at 2-135.

McIntire Poor Sch. v. Zanesville Canal & Mfg. Co., 9 Ohio 203, 288 (1839) ("[t]here is no doubt that a trust attached to the property, whoever might hold it, 'for whenever a person by will gives property, and points out the object, the property, and the way it should go, a trust is created'"). *See generally Rockwell v. Blaney*, 9 Ohio N.P. (n.s.) at 500 ("[a] trust never fails for the want of a trustee, for it is within the general equity powers of a court of chancery to appoint one where that is all that is necessary to be done to make the trust operative").

In any event, the history of the real property in question indicates that the property was conveyed to, and accepted by, the county treasurer, and that it has been used for school purposes without interruption for more than one hundred fifty years. We conclude, therefore, that the real property conveyed to the Morgan County Treasurer by James A. McConnell, executor of the estate of Robert McConnell, by deed dated August 7, 1851, and recorded March 9, 1852, appears to be held in trust for the use and benefit of McConnelsville schools and may be used and managed by the board of education with responsibility for schools in McConnelsville.

Equitable Powers of Court to Authorize Transfer of Property Held in Trust

The current Morgan County Treasurer holds the property in question as successor of the county treasurer who accepted it from the McConnell Estate. The county treasurer is responsible for preserving the property for public use by the appropriate school district, unless a court decrees otherwise. It is currently the case that county treasurers have neither responsibility for the operation and management of schools nor express authority to hold real property in trust for school purposes. *See* R.C. Chapter 321; notes 4-5, *supra*. Accordingly, it might readily be argued that it would be appropriate to transfer real property held in trust for school purposes from the county treasurer to the board of education.

It does not appear that such a transfer of real estate may be made by the county treasurer except through the equitable powers of the judiciary.[6] The general rule is that property held in trust for a governmental or educational purpose may not be transferred without the equitable supervision of a court. *See, e.g., Bd. of Educ. v. Unknown Heirs of Aughinbaugh*, 99 Ohio App. at 470-71 (a statute authorizing a board of education to sell school property "cannot be construed to authorize a sale of land, the fee simple title to which is held in trust for a public purpose .... [The trustee] is rigidly required to conserve and preserve the corpus of the trust.... However, under certain circumstances, a court of equity will permit a deviation from the terms of the trust ..."); *In re Southern R.R.*, 9 Ohio Dec. Reprint 549 (Cincinnati Super. Ct. 1885) (to declare a trust completed, with title transferred to the beneficial owner, requires that there be litigation with proper parties and pleadings); 1960 Op. Att'y Gen. No. 1169, p. 123, at 126 (real property held in trust by the county commissioners for a charitable use may not be sold without prior court approval; "[s]uch a sale without prior court approval would be a violation by the county commissioners of their obligation as trustees of a charitable trust"); 1953 Op. Att'y Gen. No. 2393, p. 82 (syllabus, paragraph 3) (real property held in trust for the benefit of a county children's

[6]Various statutes authorize a county to transfer property to other public entities in certain circumstances or for particular purposes, but it does not appear that any of them apply to the situation at issue. *See, e.g.*, R.C. 307.10(B) (a board of county commissioners, by resolution, may transfer real property in fee simple belonging to the county and not needed for public use to another public entity, including a school district, for public purposes upon the terms and in the manner it determines, without advertising for bids).

home may, if there is no restriction in the instrument creating the trust, be sold "under instructions and approval of a court of equity").

We are aware of one case that suggests that a public official acting as trustee may convey real property independently, without the direction of a court. In *New England Lodge No. 4 F. & A. M. v. Weaver*, 18 Ohio Cir. Dec. 592 (Cir. Ct. Franklin County 1906), *aff'd*, 76 Ohio St. 628, 81 N.E. 1192 (1907), it was held that the Governor properly conveyed to the beneficiaries land that was held in trust for their use and benefit, without the direction of a court. In 1824, the land in question had been conveyed to the Governor of Ohio and his successors in office forever, "for the use and benefit of New England Lodge and Horeb Royal Arch Chapter, Free and Accepted Masons, established in said town of Worthington." *New England Lodge No. 4 F. & A. M. v. Weaver*, 18 Ohio Cir. Dec. at 593. This lodge and chapter were established in Ohio in 1814 and 1816 and subsequently were incorporated under Ohio law. In 1891, the local bodies withdrew from their state organizations, and duplicate charters were issued to a minority of persons who had not withdrawn. The property remained in the possession of the persons who withdrew. In 1899, the Governor conveyed the property to a trustee for the local bodies holding the duplicate charters. The persons who had withdrawn challenged that action, arguing that they were the true beneficiaries of the original trust and that the terms of the trust required that the property be held by the Governor, for the specified uses, in perpetuity. The court found that conveyance by the Governor was permissible, stating:

> Our examination of the deed to Governor Morrow and of the authorities cited to us convinces us that the original trust was nothing else than a simple or dry trust, created to obviate the difficulty of granting the land directly to two unincorporated societies for their joint use. The deed names the beneficiaries and employs words of perpetuity to convey the fee, but it does not invest the trustee with any duty other than that of being the mere repository of the legal title. It was, therefore, perfectly competent for the trustee to execute the trust at the instance of the beneficiaries by conveying it to them or their nominee.

Id. at 594. The court went on to find that the Governor had conveyed the property to the proper beneficiaries, and that persons who had withdrawn from the organizations were not entitled to the benefit of the property in question.

It might be argued, in the instant case, that, like the Governor in *New England Lodge*, the county treasurer is given no duty other than to be the repository of the legal title of the land in question, and that the treasurer may, therefore, convey the property to the board of education for use by McConnelsville schools without court direction. This argument is subject to question regarding the extent of the county treasurer's duty to ensure that the property is used for the proper purpose. While the *New England Lodge* conveyance expressly named the organization to use the land, the instant deed merely refers to "schools in said Town of McConnelsville," without identifying a governing body. Further, other cases have found that, even in the case of a simple or dry trust, it is appropriate to obtain the advance authorization of a court. *See Bd. of Educ. v. Unknown Heirs of Aughinbaugh*.

We conclude, accordingly, that the better course in the instant case is for the county treasurer to request guidance from the court before making a conveyance, to ascertain that the trust is carried out in accordance with its terms. *Id.* The wisdom of seeking judicial guidance in advance of making a conveyance is reflected in the fact that, although the Governor acted independently in the *New England Lodge* situation, the matter was not fully resolved until a court examined it and determined authoritatively which persons were the

proper beneficiaries of the trust. Hence, any proposal to transfer from the county treasurer to the board of education the ownership of real property that is held in trust by the county treasurer should be approved by an appropriate court with equitable powers.

Therefore, in order to transfer ownership of the real property in question, it would be appropriate to bring an action in a court with equitable powers, asking permission for the county treasurer to convey the property to the board of education. *See* 1960 Op. Att'y Gen. No. 1169, p. 123; 1953 Op. Att'y Gen. No. 2393, p. 82, at 89 ("[i]t is well settled that courts of chancery or equity have always had jurisdiction of the administration of charitable trusts. And trustees, if in doubt as to their powers or as to the intent of the donor, may apply to the court for instructions" (citations omitted)). *See generally* R.C. 2101.24(B)(1)(b) (the probate court has concurrent jurisdiction with, and the same powers at law and in equity as, the general division of the court of common pleas to hear and determine actions involving a charitable trust).

A judicial proceeding of this sort would provide a forum for considering the purpose of the initial conveyance and any rights that the heirs of Robert McConnell might have. It would also provide opportunity to assure that the appropriate entity receives the trust property. *See, e.g., Bd. of Educ. v. Ladd*, 26 Ohio St. 210 (1875); *Zanesville Canal & Mfg. Co. v. City of Zanesville*, 20 Ohio 483 (1851); 1960 Op. Att'y Gen. No. 1169, p. 123, at 126-27.[7]

Use by School District of Property Held in Trust

With regard to the use of the real property absent a conveyance to the board of education, we see no reason why the board of education cannot continue to use and manage the property as it has been doing. The property is held in trust "for the use, benefit and behoof of schools in said Town of McConnelsville, and for no other purpose whatsoever." The board of education with responsibility for schools in McConnelsville thus is entitled to use the property.

The use of property for school purposes encompasses the authority to build, repair, maintain, and operate school buildings and, when appropriate, to demolish and replace them. *See* R.C. 3313.17; R.C. 3313.36(A) (a board of education cannot accept a bequest, gift,

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[7]Although we are not empowered to make a definitive determination on this point, our research indicates that it is unlikely that the heirs retain rights to the real property. The general rule appears to be that, where land is conveyed in trust for school purposes forever for a valuable consideration recited in the deed, the title to the land does not revert to the grantor or his heirs even if the use for school purposes is abandoned, unless the deed contains appropriate words of forfeiture or re-entry. 1960 Op. Att'y Gen. No. 1169, p. 123, at 126-27; 1949 Op. Att'y Gen. No. 1187, p. 804; 1938 Op. Att'y Gen. No. 1706, vol. I, p. 15; 1931 Op. Att'y Gen. No. 2873, vol. I, p. 100 (syllabus); *see Village of Ashland v. Greiner*, 58 Ohio St. 67, 50 N.E. 99 (1898); *see also Miller v. Brookville*, 152 Ohio St. 217, 89 N.E.2d 85 (1949); *In re Copps Chapel Methodist Episcopal Church*, 120 Ohio St. 309, 166 N.E. 218 (1929). *But see McMechan v. Bd. of Educ.*, 157 Ohio St. 241, 105 N.E.2d 270 (1952) (judgment of probate court appropriating land for a schoolhouse site under act passed in 1852 did not grant board of education a fee simple estate, but only the use of the premises for the purposes stated); *Sperry v. Pond*, 5 Ohio 387 (1832) (language permitting the use of land "so long" as the use was for a stated purpose "and no longer" constituted a condition authorizing reversion to the grantor's heirs if the authorized use ceased). *See generally Bd. of Educ. v. Unknown Heirs of Aughinbaugh*, 99 Ohio App. 463, 134 N.E.2d 872 (Auglaize County 1955).

or endowment "if the conditions remove any portion of the public schools from the control of the board"); R.C. 3313.37; R.C. 3313.47 ("[e]ach city, exempted village, or local board of education shall have the management and control of all the public schools of whatever name or character that it operates in its respective district"); *Schwing v. McClure*, 120 Ohio St. 335, 166 N.E. 230 (1929); 1961 Op. Att'y Gen. No. 2658, p. 679; 1956 Op. Att'y Gen. No. 7225, p. 738 (the powers of a board of education include those that are necessarily implied to accomplish the express powers). Thus, the authority of a board of education to use and manage property held in trust for its use and benefit includes the authority to construct, maintain, demolish, and replace school buildings. Therefore, the property in question may be used and managed, and buildings may be demolished and constructed, by the board of education with responsibility for schools in McConnelsville, in the exercise of its statutory discretion.

Although it might be argued that the county treasurer is responsible for ensuring that the land in question is used for school purposes and for no other purposes, it does not appear that the county treasurer has any responsibilities regarding the management or operation of the property or of schools located on it. Should the board of education cease to use and maintain the property, it would be appropriate for the county treasurer to seek instruction from the courts regarding the proper use or disposition of the trust property.

Participation of the Attorney General

Pursuant to statute, the Attorney General "is a necessary party to and shall be served with process or with summons by registered mail" in all judicial proceedings that have as their object certain types of actions regarding charitable trusts. R.C. 109.25. The relevant judicial proceedings include proceedings to terminate a charitable trust or distribute assets; proceedings to depart from the objects or purposes of a charitable trust as set forth in the instrument creating the trust, including proceedings for the application of the doctrine of cy pres or deviation; proceedings to construe the provisions of an instrument with respect to a charitable trust; and proceedings to determine the validity of a will having provisions for a charitable trust. *Id.*

It appears that an action to convey to the board of education real property held in trust by the county treasurer would constitute either the termination of a charitable trust and the distribution of assets, or an effort to substitute the board of education for the county treasurer as trustee of the land in question in a proceeding to deviate from the terms of the instrument creating the trust. In either case, the Attorney General would be a necessary party who must be served with process or with summons in the proceeding. R.C. 109.25; *see, e.g., Uncrop v. Klein*, No. 71117, 1997 Ohio App. LEXIS 1653 (Cuyahoga County Apr. 24, 1997).[8] The Attorney General's role in such a proceeding is to represent the interests of beneficiaries of the charitable trust. *See State ex rel. Lee v. Montgomery*, 88 Ohio St. 3d 233, 236, 724 N.E.2d 1148 (2000); *Kingdom v. Saxbe*, 9 Ohio Op. 2d 137, 138, 161 N.E.2d 461 (Prob. Ct. Ashtabula County 1958). Accordingly, should there be a court action for the

[8]Even if the Attorney General were not required to be served, he could intervene in any judicial proceeding affecting a charitable trust, either upon request of the court or "when he determines that the public interest should be protected in such proceeding." R.C. 109.25. The Attorney General is also authorized to investigate the operations of a charitable trust to determine whether the property is being properly administered, and to institute and prosecute an action to enforce the performance of a charitable trust when he considers such action advisable or upon direction of the Governor, the Supreme Court, the General Assembly, or either house of the General Assembly. R.C. 109.24.

proposed transfer of real property held in trust for school purposes by the county treasurer, the Attorney General must be notified and may participate in accordance with the provisions of R.C. 109.25.

As a practical matter, the Charitable Law Section of the Office of the Attorney General frequently cooperates with those bringing charitable trust actions. In such instances, the parties work out a draft Complaint, a draft Answer, and a draft Judgment Entry in advance of the filing of the action. They file the pleadings plus a waiver of service on a single day, and will have previously contacted the court to set up an immediate hearing time. Because most judges approve agreed entries willingly, it is frequently possible to have the case started and closed on the same day. To determine whether a cooperative approach of this type is possible in a particular instance, please contact the Charitable Law Section of this office, currently located at 150 East Gay Street, 23rd Floor, Columbus, Ohio 43215. The current telephone number is (614) 466-3180.

Conclusion

For the reasons discussed above, it is my opinion, and you are advised, as follows:

1. The real property conveyed to the Morgan County Treasurer by James A. McConnell, executor of the estate of Robert McConnell, by deed dated August 7, 1851, and recorded March 9, 1852, appears to be held in trust for the use and benefit of McConnelsville schools and may be used and managed by the board of education with responsibility for schools in McConnelsville.

2. Any proposal to transfer from the county treasurer to the board of education the ownership of real property that is held in trust by the county treasurer should be approved by an appropriate court with equitable powers.

3. The authority of a board of education to use and manage property held in trust for its use and benefit includes the authority to construct, maintain, demolish, and replace school buildings.

4. Should there be a court action for the proposed transfer of real property held in trust for school purposes by the county treasurer, the Attorney General must be notified and may participate in accordance with the provisions of R.C. 109.25.