

1503

EDUCATION—PURCHASE OF REAL PROPERTY—RESERVATION BY GRANTOR OF A LIFE ESTATE; PAYMENT OF TAXES BY THE BOARD ILLEGAL—BOARD MAY REDEEM AT A TAX SALE WHEN LIFE TENANT FAILS TO PAY TAXES.

SYLLABUS:

1. Purchase by a board of education of real estate subject to a reserved life estate discussed.

2. Where a board of education has, pursuant to the authority of Section 3313.37, Revised Code, purchased real estate for the purpose therein stated, in a portion of which the grantor has reserved the right to the use for his life, such board is without authority to pay the taxes on such life estate, even in case of the default of such life tenant to pay the same.

3. Where the owner of a life estate in lands belonging to a school district fails to pay the taxes thereon, and said property is sold at delinquent tax sale, it will be lawful for the board of education of such district to become the purchaser at such sale, or in case such property has so sold, to exercise its right as remainderman by redeeming the same as provided by Section 5719.22, Revised Code.

Columbus, Ohio, January 3, 1958

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

Dear Sir:

I have before me your request for my opinion, reading as follows:

“Under the powers vested in boards of education by Section 3313.17 of the Revised Code, school boards may be capable of:

‘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.’

“In Clermont County, the New Richmond Exempted Village School District, purchased a farm containing 73.62 acres of land, more or less, for school purposes. However, it appears from the Deed of Conveyance that a life estate in a dwelling house and several acres of land on which the dwelling house sets and is surrounded was retained by the grantors. The Clermont County Auditor, and I think properly, is putting this particular property, namely the dwelling house and the specifically referred acreage

upon which it sets, on the tax duplicate. The State Examiner making an examination of the district is questioning the right of the school district to pay the taxes on the land covered by the life estate interest of the one grantor.

“A formal opinion is respectfully requested to:

1. Whether or not a school district may lawfully acquire land conditioned upon the grantor retaining a life estate in such land or portion thereof.
2. Whether or not a school district might lawfully expend public funds to pay taxes on such land that is covered by a life estate.

“Section 3313.44 of the Revised Code states that:

‘Real or personal property vested in any board of education shall be exempt from taxation and from sale on execution or other writ or order in the nature of an execution.’

“I find nothing in the law that would authorize a school district in the paying of taxes on the lands covered by such a life estate.”

From your letter it would appear that the only question to which you really require an answer is that raised by your examiner, to-wit, as to the right of the board of education to pay taxes on the portion of the property reserved by the grantor for use during her lifetime.

It does not appear to me that an answer to your first question, to-wit, the general right of the board of education to purchase real estate with a reservation of a life interest in the grantor, is essential to a consideration of the real question which you present. The purchase in this case is a closed transaction. The purchase price has been paid, the deed delivered, and presumably the board is in possession of the property. We may assume that the purchase was made for a purpose sanctioned by the law. But it appears that as to a small portion of the ground, possession by the board of education will be postponed for an indefinite period. Accordingly, I will touch but lightly on the power of the board to make the purchase in question.

Section 3313.17, Revised Code, to which you refer, reads as follows:

“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.”

While the above quoted statute does concede to a board of education in general terms the power to acquire, hold and dispose of real property, it appears to me that the language of the grant is only by way of description of the general character of a board of education as a body politic and corporate, and we must look to some other provision of the statute which would give specific authority for such board to purchase real estate for the purposes for which a board of education is constituted. This authority is to be found in Section 3313.37, Revised Code, which reads as follows:

“The board of education of any school district, except a county school district, may build, enlarge, repair, and furnish the necessary school houses, *purchase or lease sites therefor*, or rights of way thereto, or *purchase or lease real estate to be used as playgrounds for children* or rent suitable schoolrooms, either within or without the district, and provide the necessary apparatus and make all other necessary provisions for the schools under its control.” (Emphasis added)

Here it will be noted that in connection with the building of necessary school houses, the board may purchase or lease *sites therefor*, and the authority is further extended to the purchase or lease of real estate to be used as playgrounds for children. That, so far as I can discover, is the extent of the authority of such board to purchase real estate.

In other words, a board of education is not given any authority to indulge in the purchase and sale of real estate for any other purpose except for use in providing for school facilities. It certainly has no right to purchase property for speculative purposes and I would regard a remainder, based on a reserved life estate as partaking of that character.

Accordingly, I cannot concede to a board of education the power generally to purchase property which in its entirety, is subject to a life estate reserved therein to some person or persons. This could readily result in the funds of the board of education being invested in real estate of which it could have no possession or use for a possible ten, twenty or fifty years.

However, the above conclusion need not be applied too severely. It appears that the purchase in question was of a tract of 73.62 acres for a total consideration of \$19,500.00, which would be at the rate of approxi-

mately \$265.00 per acre. It further appears that there was included in this tract a house occupied by the owner with two acres of ground appurtenant to it. This two acre tract is the portion which the grantor reserved for use for her life.

While it is clear that a board of education is authorized to purchase real estate only for the purpose of providing for the functions committed to it by the law, yet in the absence of specific restrictions, we must concede to the board a reasonable discretion as to the terms of the purchase, including the time for possession, and if in the purchase of a tract of ground intended and presently suitable and adequate for such uses, it acquires a small portion, the possession of which is, under the contract of purchase, delayed for a time, it cannot be said to have abused its discretion. In the case which you present a small fragment of the ground which it has acquired, is to be left in the possession of the grantor during her life. The main purpose of the purchase appears to have been fully accomplished and the result is merely a delay for an indefinite period, of the complete possession of a portion not immediately required.

This situation appears to me to be quite parallel to that which was presented in the case of *University vs. Evatt*, 144 Ohio St., 434. There it appeared that Miami University had purchased a tract of some 15 acres of ground for the use of the university, a small portion of which, about an acre, was occupied as a residence by the grantor, and in the conveyance that tract was reserved for the life of the grantor. The case came into the Court on an appeal from an order of the Board of Tax Appeals exempting from taxation the portion which was immediately available for use by the university, and leaving a portion reserved by the owner on the duplicate for taxation.

The Court sustained the action of the Tax Commission, and no question seems to have been raised as to the right to purchase the property with that reservation.

This brings us to a consideration of your second question, to-wit, whether a school district having acquired land for school purposes, a portion of which is covered by a life estate reserved to the grantor, may lawfully spend public funds to pay the taxes on the land so reserved. There can be no question but that such reserved land is subject to taxation. Section 5719.19, Revised Code, places the obligation to pay the same on the life tenant. That section reads as follows:

“Each person shall pay the tax on lands or town lots of which he is seized for life * * *.”

The case of *University vs. Evatt, supra*, emphasizes the right to have the portion affected by the life estate listed for taxation while exempting the balance of the tract held and used by the public body.

There is certainly no authority in the statutes on which a board of education could justify the assumption by it of a debt of any other person, such as the obligation resting on a life tenant to pay taxes on his life estate.

Section 3313.37, *supra*, contains no express authority to assume payment of such tax obligation and I find no justifiable basis for implying such authority.

In *State, ex rel. Clarke v. Cook*, 103 Ohio St., 465, 467, Justice Wanamaker quotes from *State, ex rel. Locher, Prosecuting Attorney v. Menning*, 95 Ohio St., 97, at page 99, as follows:

“The legal principle is settled in this state that county commissioners, in their financial transactions, are invested only with limited powers, and that they represent the county only in such transactions as they may be expressly authorized so to do by statute. The authority to act in financial transactions must be clear and distinctly granted, and, if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county.”

He then added:

“This doctrine as applied to boards of county commissioners in their financial transactions must in principle be equally obligatory upon boards of education in their financial transactions.”

There remains the possibility that the life tenant may neglect or refuse to pay the taxes, in which case the board of education would be exposed to possible loss of some of its property through forfeiture. I do not, however, consider that we are bound to assume that this life tenant will default in her obligation. If, however, she should default, then the question arises as to what the board of education may do.

One possible way to avoid this eventuality is for the board of education to undertake to pay the taxes as they become delinquent. However, as pointed out in the case of *Tilney v. Board of Education, etc. et al.*, 23 N.P. (N.S.) 465, it is improper for a school board to undertake payment of

that which a statute has made the duty of another to pay because "any funds used to pay for the cost of such protection would be an unnecessary and unauthorized expenditure of public funds."

Once the lands have been sold for taxes there is no longer any duty devolving on the life tenant. It is then possible for the board of education, as remainderman, to utilize Section 5719.22, Revised Code, which reads:

"If any person seized of lands in dower or for life fails to pay the taxes thereon so that such lands are sold for the payment thereof, and such person does not redeem them according to law within one year after such sale, he shall forfeit to the person next entitled to such lands in remainder or reversion all the estate which he has in such lands. *The remainderman or reversioner may redeem the lands in the same manner as other lands are redeemed after being sold for taxes.* The person who failed to pay such taxes shall be liable to the person next entitled to the estate for all damages such person has sustained by such failure."
(Emphasis added)

This, it seems, would be perfectly consistent with good policy in that the board would now be acting in its own behalf and undertaking that which no other person is obligated to do. Also, it seems completely logical to imply from the specific authority to purchase real property the authority to protect the interest in such property once acquired. This right, it seems clear, would extend to a loss such as is here considered, as plainly as if damage had occurred to its property by trespass or other injury. For any such loss or damage, the board would have a right to recover damages from the wrongdoer.

It is my further opinion that such board of education instead of awaiting the outcome of such sale and exercising such right of redemption, would have authority to become the purchaser at such sale.

For the reasons stated above, it is my opinion, and you are advised:

1. Purchase a board of education of real estate subject to a reserved life estate discussed.
2. Where a board of education has, pursuant to the authority of Section 3313.37, Revised Code, purchased real estate for the purposes therein stated, in a portion of which the grantor has reserved the right to the use for his life, such board is without authority to pay the taxes on such life estate, even in case of the default of such life tenant to pay the same.

3. Where the owner of a life estate in lands belonging to a school district fails to pay the taxes thereon, and said property is sold at delinquent tax sale, it will be lawful for the board of education of such district to become the purchaser at such sale, or in case such property has been sold, to exercise its rights as remainderman by redeeming the same as provided by Section 5719.22, Revised Code.

Respectfully,

WILLIAM SAXBE

Attorney General