

**OPINION NO. 71-094****Syllabus:**

1. A lessee of State school lands, who has made substantial improvements, who requests that an appraisal be made with a view to purchase of the lands under the second paragraph of Section 501.08, Revised Code, and who thereafter withdraws his request for the appraisal prior to receiving an offer from the Auditor of State, has no present right to purchase the lands since the statutory basis for an offer by the Auditor of State has been removed.

2. Even if the Auditor's offer to sell State school lands to a lessee under the second paragraph of Section 501.08, Revised Code, remains open after the request for an appraisal has been withdrawn, the offer remains open only for a reasonable time, not to exceed 60 days.

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**To: Joseph T. Ferguson, Auditor of State, Columbus, Ohio**

**By: William J. Brown, Attorney General, January 3, 1972**

Your request for my opinion poses the following question:

"Does the lessee (Willow Point) have a right to purchase the school land located in Margaretta Township, Erie County, under the provisions of Section 501.08?"

Prior to March 1, 1803, when Ohio became the seventeenth state of the Union, Congress had reserved certain lands in the Northwest Territory for the use of the schools and the support of religion within the states to be thereafter established in that Territory. In 1963 Congress permitted Ohio to sell all such lands within the State for the support of public education. See Section 501.14, Revised Code.

In 1969, pursuant to this Congressional permission, the General Assembly enacted a revision of Chapter 501, Revised Code, which provides for the present day management of the school and ministerial lands in Ohio. The Auditor of State, by virtue of his office, is the State Supervisor of all school and ministerial lands. Section 501.01, Revised Code, provides as follows:

"By virtue of his office, the auditor of state shall be the state supervisor 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."

The Auditor is charged with the enforcement of all laws relating to the school and ministerial lands. Section 501.02, Revised Code, provides as follows:

"The auditor of state, as the state supervisor of lands appropriated by congress for the support of schools or for ministerial purposes, shall see that the laws relating to such lands are faithfully executed. He may bring and prosecute an action, in the name of the state, to enforce any lease upon such lands, to restrain the illegal use of such lands or the commission of waste, to recover damages arising out of the commission of such waste, or may bring any action that is otherwise necessary to enforce such laws. Such action shall be commenced in the county wherein the land or a major portion thereof is situated."

The General Assembly provided that all school and ministerial lands be sold or disposed of and the proceeds used for public education. Section 501.14, supra. If the total value of all such lands credited to a school district is less than \$50,000, the Auditor is to dispose of them himself. If the value is in excess of \$50,000, different procedures are provided by Sections 501.04 and 501.041, Revised Code. Section 501.04, supra, provides as follows:

"The auditor of state, as the state supervisor of lands appropriated by congress for the support of schools and ministerial purposes, shall sell or dispose of such lands as provided in this section. Moneys, received from their sale or disposition, annual rentals from leases that have not yet expired, and all funds held by the state from the prior sale or disposition of these lands and interest thereon shall be paid into the school district deposit fund, except that lands and funds to the credit of a school district under the terms of the original grant, and which are in excess of fifty thousand dollars belong to the school district and shall be used in accordance with the provisions of law hereafter established by the general assembly. If the total value of the lands credited to a school district under the terms of the original grant exceeds fifty thousand dollars, as determined by department of public works appraisal conducted by at least two disinterested appraisers, the lands or any part thereof shall be sold upon specific authorization of the general assembly or in the manner set forth in section 501.041 [501.04.1] of the Revised Code. In the event the sale of such lands has not been authorized and the lease or leases thereon expire, the auditor of state is authorized to renew or lease anew such land for periods not to exceed two years. Lands and funds in excess of fifty thousand dollars to the credit of any school district under the terms of the original grant shall be administered by the auditor of state, as the state supervisor, and shall be invested by the commissioners of the sinking fund. All proceeds earned from the investment of these funds during each fiscal year shall be credited to the appropriate school district and paid to the school district within sixty days after the close of that fiscal year."

And Section 501.041, supra, provides in pertinent part as follows:

If the total value of the school and ministerial lands credited to a school district under the terms of an original grant exceeds fifty thousand dollars, the lands may be sold by a divestiture committee consisting of five members, includ-

ing two members chosen by the board of education of the school district which would receive revenue from the sale of such land; the auditor of state or his representatives or, if two school districts receive revenues from the sale of such land, one member chosen by the board of education of each district; the director of public works or his representative; and one member chosen by the legislative authority of the municipal corporation or township in which the lands lie or, if the lands lie in unincorporated territory, by the board of trustees of the township in which the lands lie, or, if the lands lie in two or more municipal corporations, townships, or municipal corporations and townships, by the board of county commissioners. The divestiture committee may sell the lands or any parts thereof or interests therein, upon affirmative vote by at least four members, at public auction or by the receipt of sealed bids in the manner provided in sections 501.06, 501.07, and 501.08 of the Revised Code, or at private sale, negotiated by the committee with any prospective buyer. No land, part thereof, or interest therein shall be sold for less than its value as appraised by the department of public works. \* \* \*

The school and ministerial lands administered by the Auditor are divided into three classes by Section 501.06, Revised Code, which provides as follows:

"Lands appropriated by congress for the support of schools and ministerial purposes and administered by the auditor of state include the following:

"(A) Lands on which the lease has expired or will expire after a period of time, not to exceed twenty years after January 1, 1970;

"(B) Lands on which the lease is determined to be for a period of time as defined in division (A) of this section and where substantial improvements have been added at the expense of the lessee;

"(C) Lands leased for ninety-nine years, renewable forever, or leases which have been renewed for a like term."

Lands, which fall into the classification provided in Section 501.06 (A), supra, may be sold at public auction or by receipt of sealed bids, provided that a satisfactory appraisal is received and an offer made in conformity with statutory requirements. Section 501.07, Revised Code, provides as follows:

"Lands defined in division (A) of section 501.06 of the Revised Code shall continue to be leased under the terms granted until such time as the lease may expire. At the time of expiration, subject to section 501.04 of the Revised Code, the land shall be offered for sale by public auction or by the receipt of sealed bids with the sale awarded by the auditor of state to the highest bidder. Prior to the offering of these lands for sale, the department of public works shall have an appraisal made of these lands by at least two disinterested appraisers. Notification of the sale of these lands, including the minerals in or on these or other lands shall be advertised at least once a week for two consecutive weeks in a newspaper of general circulation in the county in

which the land is located. No bids shall be accepted for less than the appraised value of the land."

As to those lands, however, upon which the lessee has made substantial improvements and which fall into the classification under Section 501.06 (B), supra, a different procedure is provided. Section 501.08, Revised Code, provides as follows:

"Lands defined in division (B) of section 501.06 of the Revised Code shall be sold, subject to section 501.04 of the Revised Code, as provided in this section. Substantial improvements added at the expense of the lessee shall not be considered as a part of the land to be appraised or sold. Appraisal by at least two disinterested appraisers undertaken by the department of public works shall consist of the land offered for sale, plus any improvements undertaken by the state supervisor of lands appropriated by congress for the support of schools and ministerial purposes or his predecessor in the supervision of the lands at their expense. The lessee shall have first option to purchase the land at the appraised amount. If the lessee does not purchase the land within sixty days of the offer made by the state supervisor the property shall be sold as provided in section 501.07 of the Revised Code.

"The lessee of land upon which a lease has not as yet expired may request that an appraisal be made of that land by the department of public works prior to expiration of the lease. The lessee may accept an offer of the state supervisor of the appraised value of the land and agree to purchase the land immediately. Under such circumstances, the lease shall be cancelled upon the lessee's payment of the purchase price and the lessee shall receive a deed in fee simple to the property."

It is manifest from the above statutes that it was the intent of the General Assembly that the proceeds from the sale of the school and ministerial lands must be devoted to the support of the public school system of the State. Sections 501.04 and 501.14, supra. It is likewise clear that the Auditor, as the State Supervisor of the school and ministerial lands, is charged with the duty of seeing to it that the intent of the General Assembly is faithfully carried out, and that he may take any action necessary to enforce the provisions of Chapter 501, Revised Code. Section 501.02, supra. The careful detail with which the General Assembly spelled out the provisions for the sale of the various classifications of the school and ministerial lands is ample evidence of its intent that the public school system of the State receive full value from the sales of the lands originally appropriated by Congress for the support of the schools.

The files which you have made available to me show that the Willow Point Club is the lessee of certain school lands for a term running from January 1, 1957, to December 31, 1972. On November 14, 1969, the secretary-treasurer of the Club requested that the Department of Public Works undertake an appraisal of the land pursuant to Section 501.08, supra. The two appraisers appointed by the Department of Public Works submitted a report on February 27, 1970, listing the fair market value as \$15,280. This was rejected by the Department as unsatisfactory. On December 28, 1970, the same two appraisers turned in a new report listing the fair market value as \$34,000. The Department of Public Works forwarded this report to your predecessor. On January 6, 1971, your predecessor wrote to the secretary-treasurer of the Club to the effect

that the Club could purchase the land for \$34,000 at any time prior to the termination of its lease. On that same day, however, the secretary-treasurer of the Club wrote the following letter to your predecessor:

"Having received no formal notification of the appraisal of the Willow Point property located in Margaretta Township, Erie County, Ohio as requested, please regard this letter as notification to withdraw other requests for an appraisal for the purchase pursuant to Section 501.08, Revised Code.

This request was made to Mr. Alfred C. Gienow, Director of Public Works, under the date of November 14, 1969, more than thirteen months ago and up to the present time, we have not been officially notified of any action given it.

"We will continue under our present lease which expires on December 31, 1972."

Nothing further occurred until the first week of June 1971. At that time the attorneys for the Club contacted the School and Ministerial Lands Section of your office, stated that they were ready to present a check for \$34,000, and requested that a deed be prepared transferring the land to the Club. The check has not been accepted.

The question is whether the Club has a present right to purchase the land under the provisions of Section 501.08, supra. The two paragraphs of that Section govern the sale of school lands upon which the lessee has made substantial improvements. The first paragraph applies in instances in which the lease either has expired, or is just about to expire. It obviously does not apply here since at the time the Club requested an appraisal its lease still had over two years to run. The second paragraph applies where, as here, the lease has not yet expired. I quote that paragraph again for your convenience:

"The lessee of land upon which a lease has not as yet expired may request that an appraisal be made of that land by the department of public works prior to expiration of the lease. The lessee may accept an offer of the state supervisor of the appraised value of the land and agree to purchase the land immediately. Under such circumstances, the lease shall be cancelled upon the lessee's payment of the purchase price and the lessee shall receive a deed in fee simple to the property."

As has already been noted, the General Assembly carefully prescribed the conditions to be observed in the sale of school lands in order to protect the birth rights of the public school system in the State of Ohio. There must, therefore, be strict compliance with the second paragraph of Section 501.08, supra, if the land is to be sold to the Club at the present time. It is well recognized that a contract, which does not comply with applicable statutory provisions, is invalid. In Bell v. Telephone Co., 149 Ohio St. 157, 158 (1949), Judge Turner, speaking for the Court, said:

"It is elementary that no valid contract may be made contrary to statute, and that valid, applicable statutory provisions are parts of every contract. Public utility service in this state is regulated by statute and no contract for service may be made by a public utility except as provided by statute. \* \* \*

See also Akron v. P.U.C., 149 Ohio St. 347, 355 (1949); Jacot v. Secrest,

153 Ohio St. 553, 558 (1950). Garlock v. McFarland, 159 Ohio St. 539, 545 (1953); E. Mach. Co. v. Peck, 161 Ohio St. 1, 6-7, 9 (1954); Smith v. Juillerat, 161 Ohio St. 424, 430 (1954). Under the facts as outlined above, I do not believe that there has been such compliance with the provisions of the second paragraph of Section 501.08, supra, as would permit you to accept the tendered check and to prepare a deed conveying the land to the Club. There are at least two reasons for this conclusion:

1. The Auditor of State, as Supervisor of School Lands, has no authority to sell such lands, when they are still under a lease which still has a substantial amount of time to run, and when the lessee has made substantial improvements, unless there has been compliance with the provisions of the second paragraph of Section 501.08, supra. The Auditor has no authority to make an offer to sell this land until the lessee triggers the statutory proceeding by requesting an appraisal of the land. In this case the Club did request an appraisal on November 14, 1969, and your predecessor did make an offer to sell the land to the Club on January 6, 1971. However, prior to receipt of this offer, the Club had withdrawn its request for an appraisal, and had notified your predecessor that it would continue its occupancy of the land under the existing lease. Your predecessor's offer was, therefore, rendered nugatory, since the statutory condition precedent to its validity was no longer in existence.

2. But even if your predecessor's offer should be considered as still outstanding after January 6, 1971, there was never any timely acceptance, and the offer lapsed. Your predecessor's letter offer was never answered by the Club. Nothing happened for six months until the attorneys for the Club offered to present a check for \$34,000 in June. It is well settled that an offer must be accepted within a reasonable time. In Ward v. Board of Education, 36 Ohio App. 557, 560 (1930), the Court said:

"\* \* \* It is a primary rule that a party contracting by mail, \* \* \* when no time limit is made for acceptance of the contract, shall have a reasonable time, acting therein with due diligence, within which to accept. \* \* \*"

Some early cases have said that "an offer without time given for its acceptance must be accepted immediately or not at all". Longworth v. Mitchell, 26 Ohio St. 334, 342 (1875). It seems perfectly clear that the law would not permit a lessee, in a case of this sort, to ask for an appraisal years before the expiration date of his lease, and then delay acceptance of the Auditor's offer in order to determine whether the land would appreciate. I think the General Assembly's use of a 60-day term for the offer in the first paragraph of Section 501.08, supra, states the outermost limit for the life of an offer under the second paragraph.

It is true that your predecessor informed the Club that his offer would remain open until the expiration of the lease, a period of almost two years. I think he was clearly mistaken, and the State, of course, cannot be estopped by the mistakes of its agents.

In specific answer to your question it is my opinion, and you are so advised, that:

1. A lessee of State school lands, who has made substantial improvements, who requests that an appraisal be made with a view to purchase of the lands under the second paragraph of Section 501.08, Revised Code, and who thereafter withdraws his request for the appraisal prior to receiving an offer from the Auditor of State has no present right to

purchase the lands since the statutory basis for an offer by the Auditor of State has been removed.

2. Even if the Auditor's offer to sell State school lands to a lessee under the second paragraph of Section 501.03, Revised Code, remains open after the request for an appraisal has been withdrawn, the offer remains open only for a reasonable time, not to exceed 60 days.