

809.

SCHOOL DISTRICT—BOARD OF EDUCATION—WHEN LAND HELD UNDER LIMITED FEE MAY BE LEASED FOR OIL AND GAS PURPOSES.

SYLLABUS:

Where the board of education of a school district obtains title to land under a deed which conveys such land to the board of education "so long as the same may be used for school purposes," said board of education, under the provisions of Section 7620-2, General Code, may lease such lands for gas and oil purposes, unless the use of the land for such purposes makes it impossible to use the same for school purposes. If by reason of operations under said oil and gas leases or otherwise, the use of such land for school purposes is abandoned, the estate and interest of the board of education in such lands terminates and the title to the same reverts to the original grantor, his heirs or assigns.

COLUMBUS, OHIO, August 29, 1929.

HON. JOHN K. SAWYERS, JR., *Prosecuting Attorney, Woodsfield, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your communication of recent date in which you request my opinion as to whether the board of education of one of the rural school districts in your county is authorized to lease school lands owned and controlled by it for oil and gas purposes under the provisions of Section 7620-2, General Code, where the board of education holds title to such land under a deed which conveys the land in question to the board of education so long as the same may be used for school purposes.

Section 7620-2, General Code, referred to in your communication, provides that when in its opinion the school district would be benefited thereby, the board of education of such district may make, execute and deliver a contract or lease to mine iron ore, stone, coal, petroleum, gas, salt and other minerals upon lands owned by such school district to any person, association or corporation. This section further provides that the consideration of such contracts and leases shall be such rental or royalty as shall be prescribed by the board of education and payable as prescribed in such contract or lease, but that such rental or royalty shall be payable at least once in every year and that the same when paid shall be deposited in the general fund of the school district.

The question presented in your communication arises by reason of the fact that the deed under which the board of education holds its title to these lands, granted and conveyed the same to the board of education "so long as the same may be used for school purposes."

An inspection of a copy of said deed which accompanies your communication, shows that said limitation appears both in the granting clause and in the habendum clause of said deed. The form of this deed is a conditional limitation, and the estate taken by the board of education of the school district under the same is a base or determinable fee which terminates when said property is no longer used for school purposes.

In the case of *Phillips vs. Board of Education*, 12 Ohio Appeals, 456, it was held:

"Lands deeded to a board of education so long as used for school purposes revert automatically to the heirs of the grantor without an express condition of reverter. The board of education in such case takes only a qualified or limited fee, terminating when the stipulated use ceases."

Supporting the conclusion reached by the courts in the case of *Phillips vs. Board of Education, supra*, the following cases may be noted: *Sperry vs. Pond*, 5 Ohio, 388; *Liferd vs. Laconia*, 75 N. H., 220; *North Adams First Universalist Society vs. Boland*, 155 Mass. 171. In this connection, I am inclined to the view that the recent case of *In re: Copps M. E. Church*, 120 O. S., 309, should be considered an authority only in cases presenting facts substantially the same as those under consideration in said case.

Touching the question stated in your communication, however, it is to be noted that the owner of the base or determinable fee in real property has all the rights and privileges of such property that he would have if he were an owner in fee simple as long as the estate in fee remains in him, and until the contingency upon which the estate is limited occurs.

In 21 Corpus Juris at page 923, it is said:

“Until its determination such an estate has all the incidents of a fee simple, and while this estate continues, and until the qualification upon which it is limited is at an end, the grantee or proprietor has the same rights and privileges over his estate as if it were a fee simple.”

It follows from this that as long as the school lands here in question are used for school purposes and the estate of the board of education therein is not terminated, the board of education of the school district owning and controlling said lands may lease the same for oil and gas purposes under the authority of Section 7620-2, General Code.

If, however, by reason of the use of such school property for oil and gas purposes under lease or leases therefor executed by the board of education, the use of such property for school purposes is abandoned, or if the use of this property for school purposes is abandoned and discontinued for any other reason, the estate and interest of the board of education in such school property will terminate and revert to the grantor in the deed to the board of education, or to his heirs and assigns.

This termination of the estate of the board of education in said property will occur not by reason of the act of the board in leasing the same for oil and gas purposes, but by reason of the fact the same has been abandoned for school purposes, if this be done.

Respectfully,

GILBERT BETTMAN,
Attorney General.

810.

MOTHER'S PENSION—COUNTY RESIDENT ELIGIBLE IF SHE HAS RE-SIDED IN ANY ONE COUNTY OF OHIO FOR TWO YEARS.

SYLLABUS:

Under the provisions of Section 1683-2, General Code, a resident of a county in the State of Ohio may make application in such county for an allowance for mothers' pension, providing such applicant has been a resident in any one county in the state for a period of two years.

COLUMBUS, OHIO, August 29, 1929.

HON. JAY R. POLLOCK, *Prosecuting Attorney, Defiance, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication, which reads as follows:

“Section 1683-2 of the General Code reads as follows, in part: