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1. EDUCATION, BOARD OF—MAY GRANT CLEAR TITLE TO PREMISES ASQUIRED UNDER DEED WHERE DEED CONTAINS NO WORDS OF FORFEITURE—LANGUAGE "FOR SCHOOL PURPOSES ONLY" CONTAINED IN HABENDUM CLAUSE OF DEED.

2. BOARD OF EDUCATION MAY BRING ACTION TO QUIET TITLE TO LAND WHERE DEEDS TO LANDS CONTAIN STATEMENTS ADVERSE TO UNEQUIVOCAL AND UNQUALIFIED FEE.

SYLLABUS:

1. A board of education may grant clear title to premises acquired by it under a deed where the deed contains no words of forfeiture and where the language "for school purposes only" is contained in the habendum clause of said deed.

2. A board of education may bring an action to quiet title to land where the deeds to such lands contain statements adverse to an unequivocal and unqualified fee.

Columbus, Ohio, November 10, 1949

Hon. George R. Smith, Prosecuting Attorney
Greene County, Xenia, Ohio

Dear Sir:

Your letter requesting my opinion reads as follows:

"I am asking for your opinion on the following matter which has arisen in this county. It is a problem of county-wide concern and one which I think will be soon, if not at present, of state-wide concern.

"The Xenia Township Board of Education of Greene County, Ohio, in past years has constructed and acquired sites for numerous small school buildings, scattered throughout the township. Due to centralization of the present school system, all of these small buildings have now been abandoned for school purposes. The Board of Education now seeks to sell these buildings and the realty thereon situated, in order that they may use the funds derived therefrom for school purposes.

"It is to be noted that a number of these buildings are well located and ideally suited for reconversion to small family dwellings. However, upon checking the titles to these various tracts

of land, I discover that a large majority of the deeds to the Board of Education specify that the grant is made to said Board of Education for school purposes only. The deeds do not contain a reversionary clause, but merely the condition as aforestated.

"Needless to say the buildings are of little value for the purpose of sale if they are severed from the realty. Also, the realty is of little value without the building situated thereon.

"120 O. S. 335, states that a public school building does not pass with the realty upon reversion to the heirs of the grantor.

"12 O. App. 456, and also 5 Ohio 387, state that in a deed of this nature, the land automatically reverts to the heirs of the grantor.

"120 O. S. 309, which is also on point of the present problem, states that there is no reversion to the heirs at law where the deed contains no provision for forfeiture or reversion.

"56 O. App. 95 disapproves O. S. 120-309 and states that in a deed of this nature the title reverts to the heirs at law of the original grantor. So, also is a ruling 20 Abs. 513, and 34 O. S. 488. 47 O. App. 383, also holds that there is a reversion of the title to the heirs at law of the Grantor.

"In 11 O. C. C. 185, the court ruled that if conditions subsequent were broken that did not ipso facto produce a reverter of the title and the estate continued in full force until proper steps were taken to constitute the forfeiture. This could be done only by the grantor during his lifetime, and after his death, by those in privity of blood with him.

"In 12 O. App. 481 and 456, the court ruled that the Board of Education which has taken land 'to have and to hold the premises as long as they are used for school purposes.' cannot quiet its title after it has abandoned the use for school purposes whether the deed contained a condition or reverter or not.

"The questions arising from this problem are as follows:

"1. Under the laws of Ohio, does the Board of Education have the right and power to grant a clear title to premises acquired by them under a deed which specifies that the grant is made for school purposes only?

"2. Is there any manner, through court action, by which they can clear said title for the purpose of sale?

"3. Assuming that they do not have this right or power, is there any manner in which they may force this property to

sale and derive therefrom the value of the building from the proceeds?

"It is to be noted that in most of the instances involving these various tracts of land, the property has been owned by the Board of Education for around 100 years and, in most instances it is now almost impossible to find any of the heirs at law of the original grantors. The law, as it seems to stand, places the school board in a peculiar position in that it still has legal title to these tracts of land due to the fact that the heirs at law have not re-entered and asserted their rights of ownership, but yet the Board of Education cannot grant a clear title to the land by sale.

"If this is the law, it can be noted how detrimental it is to the community for it means that these various school buildings will continue to be idle for many years to come as it is doubtful whether any of the heirs at law will step in and assert their claim or claims to the properties involved. Thus the lands and buildings will be idle, serving no purpose, and being absolutely of no benefit to either the community or to the school board.

"It may be that this situation can be cured only by the enactment of new laws on the part of the legislature. However, I desire your opinion on this problem."

Supplemental thereto you have advised this office by telephone that the language "for school purposes only" is contained in the habendum clauses of the deeds in question.

The first question presented by your communication is as follows:

"Under the laws of Ohio, does the board of education have the right and power to grant a clear title to premises acquired by them under a deed which specifies that the grant is made for school purposes only?"

A review of the case law applicable to your question discloses that conditions subsequent are not favored in law and are looked upon with disfavor in equity because they tend to destroy estates. Hence a condition will not be raised by implication unless the language of the deed clearly declares a condition and imports a forfeiture.

This general attitude seems to prevail in the opinion of the case of In re Matter of Copps Chapel Methodist Episcopal Church, 120 O. S. 309, decided April 10, 1929, where the syllabus reads as follows:

"Where a quitclaim deed for valuable consideration, conveys to trustees of an unincorporated church association certain

> real property, 'To have and to hold * * * unto the said grantees and their successors * * * so long as said lot is held and used for church purposes,' without any provision for forfeiture or reversion, such statement is not a condition or limitation of the grant. Since the deed contains no provision for reversion or forfeitures, all of the estate of the grantor was conveyed to the grantees. Hence, a church building affixed to the realty does not pass to the heirs of the grantors when such lot and building cease to be used for church purposes."

In the opinion of the court, at page 315, the court made the following observation:

> "* * * There are no words of condition or forfeiture in the deed. There is no reventer clause, nor any provision establishing the right of re-entry. Hence, taking the deed by its four corners, it shows that the grantor intended to convey, and did convey, to the grantees all of his estate in the land."

It should be noted that I am not unaware of the many lower court cases having a direct bearing on your question, but the inconsistency of many of these cases tends to confuse rather than to enlighten.

The obvious reason for the confusion has been the reluctance of courts to follow the Copps Chapel case, supra. However, this case does express the last pronouncement of the Supreme Court upon the subject matter of your request, and I am disinclined to follow any authorities which dispute this decision. If the doctrine of Supreme Court decisions is to be subverted or denied, it must be done by the Supreme Court itself.

Therefore, in specific answer to your first question, I am of the opinion that a board of education may grant clear title to premises acquired by it under a deed where the deed contains no words of forfeiture and where the language "for school purposes only" is contained in the habendum clause of said deed.

Your second question is as follows:

> "Is there any manner, through court action, by which they can clear said title for the purpose of sale?"

In answer to this question, your attention is directed to the case of First New Jerusalem Church v. Singer, 68 O. A. 119, decided March 10, 1941, where the court quieted title, even though the persons holding the rights and interests were making no claim that there was forfeiture but did come into court and defend.

The second branch of the syllabus of this case reads as follows:

> "Such church, upon seeking a loan upon the property in question, may, where it is asserted that the church has only a fee determinable and not an absolute fee simple title, maintain an action to remove cloud on title under Section 11901, General Code, although the heirs of the grantors are not asserting that the church has committed any act of forfeiture or any act creating a right of reversion."

The court in its opinion had this to say at page 126:

> "It is our conclusion, therefore, that the objectionable language used in the deed, attempting to create a reverter is a cloud upon the title of the plaintiff and that a decree shall be entered quieting the title of the plaintiff as to the statements in the deed adverse to an unequivocal and unqualified fee in the plaintiff."

The authority to bring such an action by the board of education, as well as the authority to dispose of said real estate, is contained in Section 4834, General Code, which 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 and of exercising such other powers and privileges as are conferred upon it by law."

It is accordingly my opinion, in specific answer to your second question, that a board of education may bring an action to quiet title to land where the deeds to such lands contain statements adverse to an unequivocal and unqualified fee.

Respectfully,

HERBERT S. DUFFY,
Attorney General.