

Opinion No. 123**Schools and School Districts—Title to School Building—Loss of Title to School Building Located on Land of Individual.**

Held: The title to a school building erected on the land of an individual under a tenancy at will or sufferance remains in the district and can be removed by the district until title is divested as provided in Section 75-1624, Revised Codes of Montana, 1947.

August 10th, 1950.

Mr. M. K. Daniels
County Attorney
Powell County
Deer Lodge, Montana

Dear Mr. Daniels:

You have requested my opinion concerning the ownership of a school house which has not been used for school purposes for several years. You advised me that the school building is located on land which is owned by an individual. You also state that there was no written lease or agreement concerning the use of the land by the district.

The problem presented is answered by Section 75-1624, Revised Codes of Montana, 1947, which reads in part as follows:

“Whenever, after the passage and approval of this act, a conditional deed has been issued to a school district for land or whenever land has been used at will or sufferance for a school

site and there has been built upon such land a school house and other improvements, and said building and improvements cease to be used for the maintenance of a school in accordance with the provisions of sections 75-1631 and 75-1632, said Board of Trustees must be notified in writing by the owner or claimant of the land which has been so deeded or used by will or sufferance for a school site that he intends to repossess the land and the school trustees shall, within a period of not exceeding one (1) year, remove the building and improvements placed thereon or they shall be deemed thereafter to have forfeited any further right to such property. Provided further that before the landowner or claimant to said land shall have the right to give the notice of removal aforesaid, the intent to abandon said land by the school district must have been expressed by the duly qualified electors in the school district in accordance with the provisions of subdivision eight (8) of Section 75-1632."

It is to be noted from the above quoted statute that the owner of the land before he can claim title to the building must give written notice of his intention to repossess the land reciting that the trustees shall remove the building within a year's time. This is a statutory recognition that a school house located on the land of another is the property of the district and the school district can be divested of title only by failure to remove after written notice.

As was stated in *Van Ness v. Pacard*, 2 Pet (U.S.) 137, 7 L. Ed. 374:

"The general rule of the common law certainly is that whatever is once annexed to the freehold becomes part of it, and cannot afterwards be removed except by him who is entitled to the inheritance. The rule, however, never was, at least as far back as we can trace into the books, inflexible and without exception."

The exceptions referred to above are multiple in regard to trade fixtures and include buildings used in trade such as filling stations. In *Farmer v. Golden Rule Oil Co.*, 130 Kan. 803, 287 Pac. 706, the court held that a tenant who had leased premises for a filling station under a five-year lease could remove the building erected by him at the end of his lease without a specific reservation of the right to do so in the lease. Cases of similar import which permitted the removal of buildings erected for commercial purposes are the following:

Firth v. Rowe 53 N. J. Eq. 520, 32 A 1064

Earle v. Kelly 21 Cal. App. 480, 132 Pac. 262

R. Barcroft and Sons Co. v. Cullen 217 Cal. 708, 20 Pac. (2nd) 665

Only one case has come to our attention concerning a school building. In *Wittenmeyer v. Board of Education*, 10 Ohio C. C. 119, 6 Ohio C. D. 258, 2 Ohio Dec. N. P. 555, it was held that a school build-

ing erected upon leased premises by a lessee Board of Education, and used exclusively for school purposes, was held to be governed by the same rule as that applying to trade fixtures, and therefore to be removable by the lessee during the term, or within a reasonable time after the expiration thereof, although the lease contained no agreement to that effect.

The fact that there is not any written lease providing that the building can not be removed leads to the conclusion that the school district used the land at the will or sufferance of the owner. The statutory rule as to the notice and the common law rule concerning fixtures is determinative of the question. The title to the building remains in the district until such time as the owner of the real property divests the district of its title by the notice and procedure provided in Section 75-1624, Revised Codes of Montana, 1947.

It is therefore my opinion that the title to a school building erected on the land of an individual under a tenancy at will or sufferance remains in the district and can be removed by the district until title is divested as provided in Section 75-1624, Revised Codes of Montana, 1947.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.